

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

v.

Criminal Case No. 1:17-cr-00232 (EGS)

MICHAEL T FLYNN,

Defendant.

**DEFENDANT’S RESPONSE
TO THE COURT’S ORDER OF JULY 9
AND GOVERNMENT’S FILING OF JULY 10**

The documents unsealed in *United States v. Rafiekian*, Criminal Case No. 1:18-cr-00457, in the Eastern District of Virginia (“EDVA”), in which Mr. Flynn has long been cooperating with the government, should have no negative impact on the proceedings before this Court now or in the future. The government agrees that sentencing should continue to be delayed.

Despite intimations in the Government’s Response that it will try to increase Mr. Flynn’s sentence depending on his testimony, if any, for the defense or otherwise (Dkt. 97), there is no basis to do so. Regardless of who might call Mr. Flynn as a witness, his testimony remains consistent with his grand jury testimony—which the government used to obtain the Rafiekian indictment. Furthermore, the government has already acknowledged Mr. Flynn’s substantial assistance.

Judge Trenga’s opinion of July 9, 2019, explains much, and we outline additional reasons for this Court below. There are even more reasons, but we are not yet sufficiently informed to brief them for this Court. In sum:

1. We do not yet have the entire file from prior counsel, and Covington & Burling, LLP (“Covington”) (former counsel) has advised it will be several weeks before all the information can be transferred.

2. The time the Court is giving new counsel to begin to digest the massive file in this case is even more important than we initially realized. While new counsel for Mr. Flynn has barely scratched the surface, counsel has identified crucial and troubling issues that should concern any court.

3. We are not yet near a position to brief the Court on the significant issues we are uncovering, because we have spent virtually all of our time and effort cooperating—preparing for and assisting the government in preparation for what would have been Mr. Flynn’s testimony on its behalf in the EDVA as well participating in preparation sessions of Mr. Flynn’s prior counsel, who are listed as the government’s witnesses in the EDVA case and who are only able to testify because of Mr. Flynn’s limited privilege waiver (another example of his cooperation).

4. Mr. Flynn has been fully cooperating with the government for almost two years. In the EDVA alone, he has spent more than 30 hours with the prosecution and been forced to incur hundreds of thousands of dollars in legal fees and other costs in the process.

5. The government’s remarkable effort to reverse its direct, affirmative judicial admissions to the EDVA Court and representations to counsel that Mr. Flynn was not considered a co-conspirator in the Rafiekian case does not diminish his extraordinary cooperation and assistance to the government. Judge Trenga ruled the government has not even proffered sufficient evidence of any “conspiracy” to allow co-conspirator hearsay into evidence—much less a conspiracy involving Mr. Flynn. Yesterday afternoon, July 10, Judge Trenga noticed a hearing for

Friday, July 12, which may more specifically address the issue regarding Mr. Flynn. EDVA Dkt. 295.

6. Mr. Flynn's continued cooperation in the EDVA case was for whatever "extra credit" it might afford him with this Court in lessening his sentence. Special Counsel had already recommended probation to this Court based on his extensive cooperation as of December 18, 2018. His cooperation with Special Counsel pursuant to his plea agreement was complete.¹

7. As new counsel for Mr. Flynn briefed for Judge Trenga, the government raised new questions, to which Mr. Flynn gave truthful answers the prosecutors did not like; however, Mr. Flynn's testimony remains consistent with his grand jury testimony, and it is truthful. The government's attempted retraction of its judicial admissions that Mr. Flynn is not a co-conspirator appears to be in retaliation for Mr. Flynn's truthful testimony because it is contrary to Mr. Van Grack's "view" of the matter—the mere suggestion of which prompted his angry outburst.²

8. Finally, the government assured Mr. Flynn and his counsel on at least two occasions that the outcome of the EDVA case would have no effect on the government's sentencing recommendation for Mr. Flynn.³

I. The Defense Still Needs Significant Time To Review The Case.

The defense is now in possession of more than four hard drives of information we have barely begun to review. It now exceeds 253 gigabytes of documents. New defense counsel has not yet received the full production from former counsel. Indeed, counsel for Mr. Flynn just

¹ Hearing Tr. 36:19-37:13, Dec. 18, 2018.

² Ex. A: Declaration of Lindsay R. McKasson and contemporaneous notes.

³ This is reflected in prior counsel's notes on 01/28/2019 and current counsels' notes on 06/25/2019.

received an additional 7,300 documents last week. Additionally, former counsel advised they expect to do rolling productions of “many more” tranches over the next several weeks.

Counsel for Mr. Flynn are also fielding demands for production of documents and testimony from multiple Congressional committees despite huge productions Covington made to four committees back in March of this year.

Most important, the Flynn team has spent almost all our time to date cooperating with the EDVA prosecutors: answering questions, reviewing materials, and assisting the government with Mr. Flynn’s expected testimony in the EDVA – as well as attending interviews of Mr. Flynn’s prior counsel, which we must monitor as our client holds the privilege.⁴ Mr. Flynn has spent approximately 30 hours with the prosecutors in the EDVA alone. His cooperation entailed countless hours of preparation, extensive travel, the frequent rearrangement of the schedules of several people, and extraordinary expense. *See infra*, § IV.

II. The Government’s Attempt to Renege On Its Judicial Admissions Should Have No Effect On Proceedings In This Court.

The government, of course, has every right to decide who it will call as it attempts to prove its case in the EDVA, but that decision should not affect Mr. Flynn’s status before this Court. The government advised the Court at the hearing on December 18, 2019 that Mr. Flynn completed his cooperation with the Special Counsel, and the government recommended a sentence of probation. Mr. Van Grack also said that Mr. Flynn had already provided assistance in the EDVA that was used to obtain the indictment in the Rafiekian case. Hearing Tr. 27:1-22, Dec. 18, 2018.

⁴ Ex. B: the dates, hours, and attendees at the nine sessions Mr. Flynn has had with prosecutors in the Eastern District alone—not to mention those with his attorneys and other people.

As detailed more, *infra*, Mr. Flynn has continued to assist the government, and its decision not to call him as a witness in its case in chief—for whatever reason—does not diminish what Mr. Flynn has done to date. *See* § IV, *infra*. The government’s obfuscatory response to this Court’s order seeks to amplify its leverage over Mr. Flynn in advance of any testimony he may give at trial.

Furthermore, as we briefed for Judge Trenga, the government, which “is no ordinary party to a controversy,”⁵ should be bound by its repeated representations to the court and to counsel. These are judicial admissions. United States Attorneys are fully empowered to bind the government, which authority is “incidental to [their] statutory authority to prosecute crimes.” *Thomas v. I.N.S.*, 35 F.3d 1332, 1340 (9th Cir. 1994). The Fourth Circuit held that in settling disputes between a defendant and the government over the latter’s commitments, it relies heavily on commercial contract law, enhanced by two factors that favor the defendant (and presumably others whose penal interests are at stake). *United States v. Harvey*, 791 F.2d 294, 300 (4th Cir. 1986). The first factor stems from the inherent rights of the defendant, which are “constitutionally based and therefore reflect[] concerns that differ fundamentally from and run wider than those of commercial contract law.” *Id.* The second concern, applicable to federal prosecutions, considers the “honor of the government, public confidence in the fair administration of justice, and the effective administration of justice in a federal scheme of government.” *Id.* These two factors—the “constitutional and supervisory concerns”—“require holding the [g]overnment to a greater degree of responsibility” for the representations it makes within the course of litigation. *Id.*

⁵ *Berger v. United States*, 295 U.S. 78, 88 (1935).

III. The FARA Filing Was Substantially Correct And Done By Expert Counsel Who Had More Information Than Mr. Flynn.

The documents, only a few of which Mr. Flynn provided to Judge Trenga, demonstrate the FARA division, including Mr. David Laufman, Department of Justice National Security Division, Chief, Counterintelligence and Export Control Section, were putting unprecedented pressure on Covington to complete and file the FARA registration for Flynn Intel Group (“FIG”). Mr. Laufman directed this effort despite the fact he tendered his resignation just days before his high-pressure phone call to Covington (the same day of Mr. Flynn’s resignation as National Security Advisor) in which it would appear that Mr. Laufman was threatening subpoenas before Covington even filed.⁶ Indeed, the FARA unit was so eager to have FIG’s filing that Ms. Heather Hunt—then head of the FARA section—responded to Covington at 10:50 pm the night it was filed.⁷

Former counsel interviewed many people—none in the presence of Mr. Flynn. Should the government’s case here fail, it will not be because of anything Mr. Flynn did or did not do. The fault will lie at the feet of the prosecutors themselves and choices made by former counsel in consultation with the FARA unit itself. Former counsel had the documents on which the prosecution relies, and made judgment as to the information to be included in the filing, which is why Judge Trenga will allow their opinion work-product into evidence—if the government chooses to proceed with its prosecution despite the many findings and implications of Judge Trenga’s opinion.⁸

⁶ Ex. C-3: notes of Covington partner Brian Smith of phone call on 2-14-2017 with Mr. Flynn and counsel (the entire filing at EDVA Dkt. 270 is attached hereto as Exhibit C; however, counsel redacted irrelevant portions of Exhibit 11. Transcript by Defendant’s undersigned counsel is attached for the raw notes of 1/2/2017 (Ex. C-2) as Exhibit H).

⁷ Ex. D: Email of March 7, 2017.

⁸ Ex. E: Trenga Op. at EDVA Dkt. 292.

To the extent there were some errors or omissions in, or preferable wording for, the FARA filing, Mr. Flynn accepted responsibility in the Statement of Offense for those inaccuracies. Nowhere, however, did he sign or recite that he willfully allowed the filing to proceed—knowing and intending it to deceive or mislead. Neither he, nor the Statement of Offense, recited that he authorized the filing knowing or intending it to be false. He cannot acquiesce to the government’s demand for that testimony, because it is not true. His former lawyers’ own notes reveal that he instructed them to “Be precise.”⁹ He cannot and will not testify otherwise.¹⁰

A. Judge Trenga Held The Government Has Not Proffered Evidence Sufficient To Establish A Conspiracy For Admission of Co-conspirator Statements.

In his order of July 9, 2019, Judge Trenga held: “The United States at this point has not presented or proffered evidence sufficient to establish by a preponderance of the evidence a conspiracy for the purposes of admitting against the Defendant [Rafiekian] the hearsay statements of alleged co-conspirators pursuant to Fed. R. Evid. 801(d)(2)(E).”¹¹ Judge Trenga will hold a hearing tomorrow specifically on the filings regarding Mr. Flynn. Supposedly, the government’s only reason for claiming Mr. Flynn is a “co-conspirator” is to obtain admission of a single document in its case in chief.

But lack of evidence of a conspiracy as to Rafiekian would apply in spades to any involvement of Mr. Flynn. Significantly, despite Mr. Flynn’s endless cooperation, Judge Trenga recognized that the government proffered nothing from Mr. Flynn to establish the existence of any

⁹ Ex. C-3 at 2.

¹⁰ Indeed, much of Mr. Flynn’s understanding of the events in this prosecution arose in the process of it and with the benefit of hindsight.

¹¹ Ex. E at 2.

conspiracy.¹² Notably, the government’s proffer was made long before Mr. Flynn’s new counsel took over his representation.¹³

Judge Trenga reviewed the prosecutors’ filings in detail and all the exhibits.¹⁴ Significantly, Judge Trenga noted the indictment “does not allege that Rafiekian was acting under the direction and control of the Turkish government when he made the alleged false statements to Covington. . .” and, it found those “alleged false statements are not a sufficient basis for a Section 951 charge that Rafiekian acted as a foreign agent with respect to some activity other than a legal commercial transaction.”¹⁵

B. Judge Trenga Held The FARA Filing Does Not Evidence A Conspiracy.

Judge Trenga also found “similarly, the FARA statement and related filings do not reflect the existence of the alleged conspiracy to act as undisclosed Turkish agents or to cause the filing of a false FARA statement, or Rafiekian’s knowing participation in any such conspiracy. The government contends that the FARA statement contains materially false statements, attributable to Rafiekian.”¹⁶ The court also held that the disclosures in the FARA statement itself do not “allow any inference of the alleged conspiracies.”¹⁷

¹² Ex. E at 28.

¹³ Ex. E at 28 and n.17: Judge Trenga points to the government’s filings at EDVA Dkt. 173 and 182 with dates May 30 and 31, 2019.

¹⁴ Ex. E at 27-28.

¹⁵ Ex. E at n. 14 and 28-29.

¹⁶ Ex. E at 29.

¹⁷ Ex. E at 29-30 and at n. 20.

C. Former Counsel Had All Information The Government Complains Proves A Conspiracy When Counsel Made The FARA Filing.

Mr. Flynn’s potential “coconspirator” status is more troubling in light of the government’s sudden change of position with respect to his testimony. Judge Trenga found the government did not contend or proffer any evidence that “Covington (which was concededly not part of any conspiracy), wrote and filed the FARA disclosures without the benefit of the emails and other documents the government contends reflects the alleged conspiracy.”¹⁸

Instead, former counsel had all the emails and information that the government claims supports a “conspiracy” and more when they completed the FARA filing.¹⁹ Moreover, according to Covington’s own notes, and consistent with what they told Mr. Flynn, prior counsel admittedly “did not necessarily go through every doc; were trying to capture high-level info of who client was and nature of work.”²⁰

IV. Mr. Flynn’s Has Fully Cooperated With The Government.

Judge Trenga himself outlined some of Mr. Flynn’s cooperation, noting, he “turn[ed] over to [law enforcement] . . . any and all evidence of crimes about which [he] is aware.”²¹ Mr. Flynn’s

¹⁸ Ex. E at 31.

¹⁹ Ex. E at 31. Furthermore, as Judge Trenga’s opinion makes plain, there are multiple issues with “the substance of the allegations in light of the substantial evidence that has been submitted in connection with the other pending motions, which raise substantial factual issues as to the Superseding Indictment’s allegations pertaining to falsity, materiality, scienter, and agency.” Ex. E at 24, n. 13.

²⁰ Compare Ex. C-11: 05/29/19 former counsel’s typed notes of Kelner interview with EDVA pp.8-9 to Ex: C-3: notes of phone call 02/14/17 with Mr. Flynn, Ms. Verderame and former counsel.

²¹ Ex. E at 12.

former Covington lawyers²² also represented to the Court that “[Flynn] cooperated extensively with the Special Counsel’s Office, and, pursuant to his plea agreement, he continues to cooperate with the U.S. Attorney’s Office in connection with this criminal case. [Doc. No. 76] at 2.”²³

And, there is considerably more cooperation cited in Judge Trenga’s opinion:

As part of his cooperation, Flynn, in his capacity as CEO and Chairman of FIG’s Board of Directors, (1) authorized Covington to share with the U.S. Attorney’s Office certain information concerning the preparation of the FARA filing; (2) authorized FIG’s former in-house General Counsel to be interviewed regarding the legal advice he provided to FIG before Covington’s retention regarding FIG’s obligation to file under FARA; (3) submitted to interviews by the U.S. Attorney’s Office about the FARA submission and the factual information he and others shared or did not share with Covington lawyers who were working on preparing the FARA filing; and (4) authorized Covington to disclose to the U.S. Attorney’s Office the factual representations made to them by FIG personnel in connection with the FARA filing; the source of those factual representations; information concerning who reviewed drafts of the FARA filing and their comments, corrections, or questions thereto; and how they received communications from FIG personnel concerning the contents of the FARA filing. See Ex. G to Mot. to Exclude Privileged Information.²⁴

Even that is not the end of it. Mr. Flynn has spent more than a hundred hours, traveling to meet with the EDVA prosecutors, preparing for those sessions, and attending those sessions. Most of his travel from Rhode Island for each of these meetings has been at his own expense. In addition, he has incurred hundreds of thousands of dollars of legal fees attributable solely to his cooperation with the government.²⁵

²² Ex. E at 12, n. 4: “Flynn is no longer represented by Covington and has obtained new counsel in this matter. *See* Doc. Nos. 210–11.”

²³ Ex. E at 12-13, n. 5.

²⁴ Ex. E at 13.

²⁵ Ex. B.

Mr. Flynn cooperated even further with the government in trying to clear up the prosecutors' misunderstanding of some crucial facts and in response to their questions and demands. Instead of seeking and confirming the truth, prosecutors doubled-down, putting prior counsel in conflict with his former client and his partner's own contemporaneous notes.²⁶ Then, the government made a sealed, *ex parte* filing, complete with a gag order that would not allow Mr. Flynn to discuss the developments even with his wife, and an FBI agent called Michael G. Flynn (Mr. Flynn's son) to question him despite knowing he was represented by counsel. They have now put his son on the witness list.

Mr. Flynn made a significant production to the government on June 27, 2019, for which he specifically waived attorney-client privilege and protections of the work-product doctrine with respect to contemporaneous notes and emails from prior counsel.²⁷ The notes show conclusively that even though one member of Mr. Flynn's former firm may not recall some points, another member's contemporaneous notes establish that Mr. Flynn's statements to former counsel were consistent with his testimony to the grand jury and EDVA prosecutors.

CONCLUSION

For these reasons, and more to be briefed as we progress in our review of the case, there should be no negative change in Mr. Flynn's status before this Court because of anything in the EDVA. Counsel for Mr. Flynn expects to provide the Court with further information by the status report date of August 31, 2019, but also, to request additional time, as we anticipated originally.

²⁶ Compare Ex. C-11: 05/29/19 former counsel's typed notes of Kelner interview with EDVA pp.8-9 to Ex: C-3: notes of phone call 02/14/17 with Mr. Flynn, Ms. Verderame and former counsel.

²⁷ Ex. F: Mr. Flynn's non-privileged production to the Government; Ex G: Mr. Flynn's Privileged Production to the Government with waiver.

Dated: July 11, 2019

Respectfully submitted,

/s/ Jesse R. Binnall

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Counsel for Defendant Michael T. Flynn

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2019, I filed the foregoing in the office of the Clerk,
which will provide notice to all counsel of record, using the CM/ECF system.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

MICHAEL T. FLYNN,

Defendant.

Criminal Action No. 1:17-cr-00232
(EGS)

DECLARATION OF LINDSAY R. MCKASSON

I, Lindsay R. McKasson declare:

1. I am an attorney at Harvey & Binnall, PLLC.
2. On June 27, 2019, I participated in a trial preparation session at the United States Attorney's Office for the Eastern District of Virginia in which General Flynn was being prepared for his testimony by the United States Attorneys.
3. On that day, I wrote contemporaneous notes during the meeting. A true and correct copy of those notes are attached hereto as Exhibit 1.
4. Later that afternoon, I transcribed my handwritten notes into types notes. A true and correct copy of those typed notes are attached hereto as Exhibit 2.

I swear that the foregoing is true and correct under the laws of the District of Columbia on this 10th day of July, 2019.

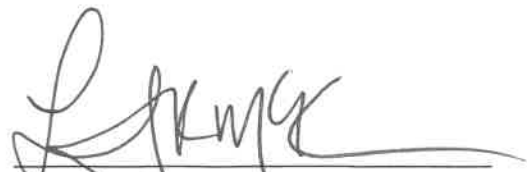

Lindsay R. McKasson

EXHIBIT 1

EDVA

10/27/19

AUSA mtg

- Jim Gillis
- Neil Hammarstrom
- Evan Turgeon - Nat'l Sec. Division
- John _____

- Testimony → consistent
- cooperate
- Grave production
- Walk-through → reviewing production

Neil: • Were the atty's who prepared PARA filing the one who were in the mtgs.

• Evan: what's the point you are trying to make
[re: crime packet]

• Evan:

• [Brandon joined]

- Confidence / Truth piece → always about Coker
 - Fours never changed
 - AS (6)
 - Bijan / Ekin came up w/ →
 - Wince U.S. got back to Turkey
 - Change in name only
 - Start is false

Sidney • Nothing in statute → willfully / knowingly
— re FARA

Brandon • Doesn't make this an offense → 1

- First time client or counsel has made stat like that
- no representation — would have been faultier in ~~mitigation~~ mitigation
- Omissions → facts about officials in Turkey
- Looks like you ~~to~~ have reviewed notes
- things he told us before
- one thing: were one thing ^{not} to go through Forest; another thing that he didn't know
- he provided them misleading / false information
- want to be clear: no false / misleading stats

Sidney: You're asking client to lie

Brandon NO One is asking your client to lie
→ be careful about what you say
• Don't ppl listening to this call →
on the line

Jim: Factual discussion

- Specially typed up notes → email them to us
 - contemporaneous, typed up notes from discussion w/ Brian Fugan
 - yes?
 - email them to us

Sidney - I don't think there are any

- Alex & male associate

Sidney: We are going to need some time

Brandon: We can talk after

EXHIBIT 2

AUSA EDVA Notes

6/27/19, 9:30 a.m. [notes were hand-written at time of interview and typed on the same day]

Attendance:

- Jim Gillis
- Neil Hammerstorm
- Evan Turgeon – Nat. Sec.
- John _____ (AUSA)
- Sidney
- Jesse
- Lindsay
- Bill

Sidney: testimony is consistent, he will cooperate...[gave production]

- Walk through production

Evan: what's the point you are trying to make [re Gulen report/packet]

Neil: Were the atty's who prepared the FARA filing the ones who were in the meetings [that are reflected in the notes]?

Sidney: Yes

[Brandon joined the call]

John: confidence/truth project – always about Gulen

- We know that the focus never changed
- Paragraph 5(b) must be what you're talking about [Stmt of Offense]
- Bijan/Ekim came up these lies, but in reality they were trying to get Gulen back to Turkey
- Project name change, was a change in name only
- The statement is false

Jesse: Covington had accurate information pre-filing

Sidney: review the FARA in totality, from appellate perspective = where the hell is your case?

- look at the whole filing
- send prison for 15 years for writing op-ed?

Bill: some ambiguous or false/misleading information

- Did not intentionally make false statements

- He did not knowingly make the statements that he knew were wrong
- Gave the information to his lawyers and figured they would get it right

John: Statement given was that the Turkey project was on business relations

- That's the story they portrayed
- When in reality, during the General's telling, he admits that the highest levels of GoT (Govt of Turkey) were involved
- Telling FARA unit that this about business relations – that is a false statement

Neil: why not raise it in colloquy?

Brandon: This agreement was extensive

- He was part of the discussions
- This is the language your client agreed to
- Statement of Offense
- He was aware false statement
- General pushed back on some language, but not this language
- Did not willfully – why not say something?
- You are reviving conversations that already occurred
- He did not say anything in front of judge

Sidney: nothing in statement says willfully/knowingly re FARA

Brandon: [very heated]

- Without willfully/knowingly it doesn't make this an offense
- First time your client or counsel has made any statement like what you are saying
- No representation that this [what you're saying is the case] – would have been factor in mitigation
- Omissions – the facts about officials in Turkey
- Looks like you have reviewed the notes
- Things he told us before
- It's one thing to say that he did not go line by line through the FARA, it's another thing to say he didn't know
 - He provided them misleading/false information
- Want to be clear – you are saying that he did not provide any false/misleading statements to Covington?

Sidney: You are asking my client to lie

- Everything I have seen is consistent – if you have seen something, show us

Brandon: No one is asking your client to lie

- Be careful about what you say

- Other people are listening on this call [on the line]¹

Jim: Let's go back to having a factual discussion

- What he believes to be true – it is difficult for us to believe that [what you're saying]
- I know sometimes when drilling down on facts that stories may evolve a bit
- I don't want him [General] to say anything but the truth
- And I am not changing that one bit
- We need to absorb what you have given us
- I think I know what Brandon was saying – clarify that your position is that he [General] never gave false information to any lawyers at Covington or to [Kristen?] whether orally or through documents?

Sidney: we have seen nothing to indicate that

Jim: You should go back to Covington lawyers

- Have you asked them for typed up versions?
- These specific interviews [before FARA filing]
- Are there no typed up interviews with them? [Sidney: I don't believe so]
- Ask them direct yes or no from them re their notes
- Have you confronted them with this? No
- Ask them for their typed up notes from that time period
- Their typed up notes would be contemporaneous notes
- Our experience → they [Covington] had associate furiously typing away
- You should ask them specifically re the typed up notes and ask them to email the notes to you
- Contemporaneous, typed up notes from discussions between Covington and Gen. Flynn

Sidney: I don't think there are any

Jim: two associates taking notes, Alex and a male

Sidney: we are going to need some time

Brandon: we can talk after [to the AUSA team]

¹ I also remember Sidney saying in response to this: Put the world on – just put the world on!

COOPERATION TIME for EDVA

Dates	Interviewee	Time of Interview	Flynn Lawyers Present
06/13/2018	GF	9:00 a.m. – 3:00 p.m.	RK, SA, AL
06/14/2018	GF	9:00 a.m. – 1:00 p.m.	RK, SA, AL
06/21/2018	RK	No Time Recorded	RP, BB
06/25/2018	GF	No Time Recorded	RK, SA, AL
07/12/2018	RL	11:00 a.m. – 12:00 p.m.	SA, AL
07/26/2018	GF	1:00 p.m. – 1:45 p.m.	RK, SA, AL
01/28/2019	GF	9:30 a.m. – 1:00 p.m.	RK, SA, AL
02/28/2019	GF	9:30 a.m.- 1:25 p.m.	RK, SA, AL
04/05/2019	GF	9:30 a.m. – 1:25 p.m.	RK, SA, AL
05/29/2019	RK	2:00 p.m. – 4:30 p.m.	RK, BB
06/03/2019	BS	3:00 p.m. – 4:30 p.m.	BB, RP
06/06/2019	GF	10:00 a.m. – 1:45 p.m.	SKP, WWH
06/25/2019	GF	No Time Recorded	SKP, WWH, JB, LM
06/27/2019	N/A	No Time Recorded	SKP, WWH, JB, LM
07/03/2019	RK	2:00 p.m. – 4:00 p.m.	SKP, JB, DW, LM
07/11/2019	RK	No Time Recorded	JB, WWH

Flynn Attorneys: Robert Kelner (RK), Stephen Anthony (SA), and Alexandra Langton (Covington & Burling); Sidney K. Powell (SKP), Jesse Binnall (JB), William W. Hodes (WWH), Lindsay McKasson (LM), David Warrington (DW—FIG Counsel).

Witnesses: General Flynn (GF), Robert Kelner (RK), Brian Smith (BS), and Robert Lenhard (RL).

FILED

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
Alexandria Division

UNITED STATES OF AMERICA,

v.

BIJAN RAFIEKIAN, *et al.*,

Defendants.

Criminal Case No. 1:18-cr-00457

FILE UNDER SEAL

MEMORANDUM OPPOSING COCONSPIRATOR DESIGNATION
OF NON-PARTY WITNESS MICHAEL T. FLYNN,
ENFORCE THE GOVERNMENT'S JUDICIAL ADMISSION
AND VACATE THE NON-DISCLOSURE ORDER

Non-party witness Michael Flynn hereby requests relief from the order issued July 3, 2019, upon *ex parte* application of the government.¹ The government, which is “not an ordinary party to a controversy,”² should be bound by the judicial admissions it made in open court on June 13, 2019, in direct response to this Court’s questions: that Mr. Flynn is not a co-conspirator in the case before the Court. This is not a mere “Correction to the Record.”

Moreover, designating Mr. Flynn as an unindicted co-conspirator and requesting such a finding by this Court by a preponderance of the evidence is unnecessary even according to the government’s response, which, due to an oversight by the government, new counsel received at 9:03 pm last night, Sunday July 7, 2019. The government itself concedes that the one document it seeks to admit per that designation is “*otherwise admissible*.”

¹ Non-party witness Flynn has requested any and all filings the government made to obtain the *ex parte* order on July 3. Mr. Flynn’s rights are directly implicated by the government’s filing and this resulting order, yet this counsel does not know what has been filed against him. Given more time, counsel will gladly provide the Court any additional information we find on these issues.

² *Berger v. United States*, 295 U.S. 78, 88 (1935).

Once the government's "correction" has been denied, this Court's Temporary Nondisclosure Order, entered on the same day under seal, would have served its purpose of preserving the status quo until this hearing could be held, and it should be vacated.³ In the alternative, if there is reason for it to remain, it should be significantly narrowed to comply with the First Amendment.

1. The Government Should Be Legally Bound by Its Judicial Admissions and Repeated Representations to Counsel.

While Mr. Flynn does not dispute the government's right to decide how to present its case and which witnesses to call, the government's sudden decision to reverse its long-stated position that Mr. Flynn is *its* cooperating witness, and to turn him into an unindicted coconspirator, is extremely prejudicial to Mr. Flynn.

Given recent events, which Mr. Flynn describes *infra*, the government's reversal also sounds an alarm of possible retaliation and may have ramifications for Mr. Flynn beyond this trial. Mr. Flynn is still willing to cooperate with the government and provide testimony consistent with his grand jury testimony and prior interviews. Indeed, Mr. Flynn is cooperating now by providing more information and further waiving the attorney-client privilege and work-product protections specific to material in this filing. And, in the last two weeks, he and his new counsel have scoured the record of his interactions with others and with his former counsel to demonstrate the soundness of his testimony regarding the facts of the underlying events and transactions.

Not only did the prosecutors advise the Court on the record that Mr. Flynn is not a

³ By its terms, the Nondisclosure Order applied to prevent "[disclosure] to anyone the existence of this Order or the Government's Notice of Correction to the Record, to be filed, unless otherwise ordered by the Court." The Order then concluded by setting a hearing "on *whether* this Order and the Government's Notice of Correction of the Record shall remain under seal" (emphasis supplied).

coconspirator, AUSA Gillis has stated repeatedly in interviews of Mr. Flynn and representations to counsel that Mr. Flynn was not implicated in the charged conspiracy.⁴ The government's "about-face" is not a "correction" of the record. There is no misstatement or typographical error which can simply be "corrected." The prosecutors made deliberate and affirmative admissions to counsel and this Court.

The government's representations and clear statements constituted a judicial admission and are binding. A judicial admission or stipulation is "an 'express waiver made . . . by the party or his attorney conceding for the purposes of the trial the truth of some alleged fact.'" *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013) (citing 9 J. Wigmore, *Evidence* § 2588, p. 821). Although a judicial admission comes most often as 'a formal concession in the pleadings or stipulations by a party or counsel], ' *Martinez v. Bally's Louisiana, Inc.*, 244 F.3d 474, 476 (5th Cir. 2001) (citation omitted), it can be made orally in the course of litigation. The determination centers on the knowledge and intent of the party making the admission, thus "[a] lawyer's statements may constitute a binding admission of a party[]' if the statements are 'deliberate, clear, and unambiguous[.]'" *Minter v. Wells Fargo Bank, N.A.*, 762 F.3d 339, 347 (4th Cir. 2014) (quoting *Fraternal Order of Police Lodge No. 98 v. Prince George's County, MD*, 608 F.3d 183, 190 (4th Cir. 2010)).

United States Attorneys are fully empowered to bind the government, which authority is

⁴ Mr. Gillis informed undersigned counsel and Mr. Flynn twice on June 6 alone that Mr. Flynn was not charged in this conspiracy, and they did not intend to charge him. This is one reason new counsel for Mr. Flynn understood that the government was only interested in and satisfied with Mr. Flynn's factual testimony as given repeatedly to date—which, as Mr. Gillis put it, "would allow the jury to infer supervision and control" of the project by the Government of Turkey—the ultimate question for the jury here—if it found the facts beyond a reasonable doubt. Dkt. 213: Hearing of 06/13/19; Tr. 65.

“incidental to [their] statutory authority to prosecute crimes.” *Thomas v. I.N.S.*, 35 F.3d 1332, 1340 (9th Cir. 1994). The Fourth Circuit has held that in settling disputes between a defendant and the government over the latter’s commitments, it relies heavily on commercial contract law, enhanced by two factors that favor the defendant. The first factor stems from the inherent rights of the defendant, which are “constitutionally based and therefore reflect[] concerns that differ fundamentally from and run wider than those of commercial contract law.” *United States v. Harvey*, 791 F.2d 294, 300 (4th Cir. 1986). The second concern, applicable to federal prosecutions, considers the “honor of the government, public confidence in the fair administration of justice, and the effective administration of justice in a federal scheme of government.” *Id.* These two factors—the “constitutional and supervisory concerns”—“require holding the [g]overnment to a greater degree of responsibility” for the representations it makes within the course of litigation. *Id.*

In this case, the colloquy between this Court and the government was very clear. Not only did the government, in response to a direct question, unequivocally state that Mr. Flynn was not a member of the conspiracy, but in the course of further questioning on the nature of the testimony Mr. Flynn would give, the government reiterated, “we do not contend that Mr. Flynn was a member of the conspiracy.” Counsel could not have been more deliberate or clear. Nor was the question one that the government had not had time to consider, since Mr. Flynn’s potential status as a co-conspirator must have been explored in considerable depth in the course of the last few months. The theory of estoppel generally is “intended to protect the integrity of the judicial system and to prevent a party from ‘playing fast and loose’ with the courts to suit the party’s purposes.” 6 Handbook of Fed. Evid. § 801:26 (8th ed.). Because counsel’s clear representation to the court was knowing and wholly unambiguous, it should be binding.

In addition, Mr. Flynn was not required by his plea agreement or otherwise to cooperate

with the prosecution in this case. The Special Counsel Office released him and advised that he had fulfilled his cooperation prior to his scheduled sentencing and again thereafter.⁵ Yet Mr. Flynn has continued to cooperate with the government for hours upon hours—at great expense of time and defense funds—as he did long before he was charged and would have continued to do even if he had never been charged.

Mr. Flynn delayed his sentencing before Judge Sullivan to continue his cooperation here, for whatever benefit—if any—that might have in his sentencing, but he could have chosen not to cooperate further, proceeded to sentencing, and be done with all of it. The government should not be allowed to place him in a worse position now and name him as a co-conspirator in this proceeding—for the feeding-frenzy of the press or for any future use it might contemplate.

2. The Government’s “About-Face” Could Be Retaliation For Mr. Flynn’s Truthful Testimony The Government Does Not Like.

As the Court knows, Mr. Flynn has new counsel. Virtually all of new counsel’s intense work to date has been assisting him in cooperating with the prosecutors in this case. It amounts to hundreds of hours. Undersigned counsel are still working all hours to try to get up to speed on the case.

After participating in further trial prep sessions with the government, new counsel advised the prosecutors last week, as Mr. Flynn has said in prior interviews, his testimony of the underlying facts of the transactions remains consistent with his prior testimony and interviews. Unfortunately, the government was not satisfied with that. The prosecutors have been adamant Mr. Flynn testify that he authorized filing the FARA form knowing and intending that it contain false statements. Mr. Flynn cannot give that testimony because it is not true.

⁵ See Ex. 1, Joint Status Report of 03/12/19.

Mr. Flynn advised the government, as Mr. Flynn has said before, that much of what he understands is with the benefit of hindsight. When Mr. Flynn agreed in his “Statement of Offense” in Judge Sullivan’s court that certain information in the FARA filing was false, he was doing so with some hindsight. Undersigned counsel advised the prosecutors that Mr. Flynn did not know and did not authorize signing the FARA form believing there was anything wrong in it. He honestly answered the questions his former counsel posed to him to the best of his recollection, and some with the benefit of hindsight. He authorized and paid for their extensive independent investigation to the tune of approximately \$170,000.

Mr. Flynn trusted his former counsel who held themselves out as experts in this area of law. They had the facts, interviewed multiple people, and reviewed many documents and emails while he was incoming and then-serving National Security Advisor, then in the uproar attending his departure. In addition, former counsel had to decide what to file under extreme and unprecedented pressure from and extensive interactions with the National Security Division—including then-NSD head, David Laufman.⁶ Admittedly, former counsel had to make difficult judgment calls, and they did so with input from the NSD itself.⁷ As for the final filing, Mr. Flynn recalls only reading the cover letter. Regardless of what he read, he did not intend to or knowingly make any false statements, and this is a complex area of law about which he knew nothing.

After counsel advised the prosecutors that Mr. Flynn could not testify that he authorized the filing of the FARA registration knowing that it contained any false statements, the government

⁶ Mr. Laufman suddenly resigned “for personal reasons” on February 8, 2017, amid the Inspector General investigation of irregularities in the Clinton email investigation and the National Security Division. However, he remained in the Department long enough to pressure Mr. Flynn’s FARA filing.

⁷ Ex.4, Kelner email of February 20, 2017 to Kristen Verderame in preparation for meeting with Department of Justice. This email is quoted in more detail, *infra*.

cancelled and rescheduled an interview of Mr. Flynn and encouraged us to reconsider our position. The prosecutors requested new counsel review hundreds of pages of notes from prior counsel (many of them handwritten) and both plea colloquies.

In the process of reviewing that material, and in the spirit of full cooperation to provide truthful testimony pursuant to his agreement with the government, Mr. Flynn partially waived attorney-client privilege on June 27 to provide the government with contemporaneous notes by former counsel of conversations with Mr. Flynn prior to the FARA filing—after the government advised us of two specific issues with respect to which they claimed Mr. Flynn was not fulsome with prior counsel. Those conversations were of an interview of Mr. Flynn on January 2, 2107, and a phone conference on February 14, 2017.⁸ In a meeting with the prosecutors on June 27, undersigned counsel walked the prosecutors through the notes which rebutted—if not flat out belied—the government’s misunderstanding of Mr. Flynn’s statements to his own counsel on issues the government raised. This prompted a heated exchange with Mr. Van Grack who participated via speakerphone. After new counsel left, Mr. Van Grack and his team seemed to double-down. They have apparently put former counsel in a direct conflict with Mr. Flynn.

They scheduled an interview by the FBI with Mr. Kelner at Covington and Burling for July 3, which they later canceled in favor of moving his preparation session from Tuesday July 2 to July 3. Also July 3, an FBI Agent also called the younger Michael Flynn directly to question him despite knowing that he was represented by counsel. The Agent persisted in trying to speak with him even after he said to call his attorney.

New counsel were informed the government would question Mr. Kelner in his July 3 interview about the notes counsel had provided, but Mr. Turgeon did not do so. Instead, Mr.

⁸ Exs 2 and 3 provided to the government on June 27; see Ex. 3-A for transcription.

Turgeon carefully worded his questions to elicit responses from former counsel that the notes by Covington’s notetaker and partner Brian Smith actually *contradict*.

Within minutes of concluding the interview of Mr. Kelner, AUSA Gillis called us only to notify us that he would not be calling Mr. Flynn as a witness, and that counsel would be receiving a gag order that prohibited us from disclosing that fact. He did not even mention that the government had made the remarkable decision to re-cast Mr. Flynn as a co-conspirator—contrary to many prior representations—and that they would seek a ruling from this Court finding him to be a coconspirator by a preponderance of the evidence in this high-profile proceeding in which he cannot defend himself.

In the spirit of full transparency and cooperation, Mr. Flynn hereby adds to his earlier production to the government the notes counsel have reviewed and transcribed since then, and pertinent emails new counsel has found—still prior to the FARA filing—and Mr. Flynn also hereby agrees to waive his own protections of the work-product doctrine and attorney-client privilege associated specifically with these notes and emails.

In these notes and emails, attached hereto as exhibits, it is clear Mr. Flynn’s former counsel were aware before the FARA filing was made:

1. The Government of Turkey was involved in the project and likely the principal beneficiary, rendering the previously filed LDA insufficient.⁹
2. Ms. Verderame, personal counsel for Mr. Flynn, advised from the first meeting with former counsel that “Ekim – emails show Turkey. Mike copied on many of the emails.” “August 4? Money from ministry. . . Government behind it, and Mike copied.”¹⁰ [Note, no money was ever traced to Turkey to our knowledge.]

⁹ Ex. 5, 02/22/2017 handwritten notes of Brian Smith of extensive meeting with FARA unit of DOJ.

¹⁰ Ex.2, 01/02/2017 handwritten notes of Brian Smith of interview with Mr. Flynn, Ms. Verderame, and Mr. Kelner.

3. Mr. Alptekin set up meeting in September. Flynn “met 2 ministers – Transportation and Foreign.”¹¹
4. “[T]he GOT [government of Turkey] had role of some kind.” “Meeting in NY – Ekim and ministers.” “No argument that Gulen focus was for commercial purpose.”¹²
5. It was apparent Ekim Alptekin had a relationship with Erdogan’s son-in-law. They brought up Gulen.¹³
6. Counsel had the “Green light [email authorization from Alptekin by Turkish officials to go ahead with the project] and 2 emails on NY/Confidence”¹⁴
7. FIG was to do “research into Gulen.” “Project Confidence” is detailed in a “75 pp report re Gulen” about which Mr. Flynn and his personal and FIG counsel Kristen Verderame told his former lawyers in their first meeting. “Plan for “disseminating what they found, based on the report.”¹⁵
8. That 75-page document, which prior counsel possessed, is all about Gulen and as reflected in counsel’s notes, was used as the basis for the op-ed.¹⁶ Flynn correctly told his counsel Bijan Kian did the first draft of the op-ed.¹⁷
9. Mr. Flynn pointed former counsel to the “other emails that show details.” Former counsel recognized that “op-ed and sleeper networks, plus criminal referrals changes context.”¹⁸
10. Former counsel: “Documents – Gulen, op research, not commercial.”¹⁹
11. The focus of the project quickly narrowed to Gulen.²⁰

¹¹ Ex.2, 01/02/2017 notes of Brian Smith in interview of Mr. Flynn with Mr. Kelner and Ms. Verderame.

¹² Ex. 6, 1/26/2017 notes of Brian Smith in phone conference with Mr. Kelner and Ms. Verderame.

¹³ Ex. 2.

¹⁴ Ex. 6.

¹⁵ Ex. 2.

¹⁶ Ex. 2, 01/02/2017 notes of Brian Smith with Mr. Flynn, Mr. Kelner, Ms. Verderame, and Ex. 7, the Project Confidence report itself.

¹⁷ Ex. 2 at 8.

¹⁸ Ex. 2; *see also*, Ex. 3.

¹⁹ *Id.* at 9.

²⁰ Handwritten notes of 2/22/2017 meeting with Mr. Flynn were transcribed a year later and omit the crucial fact that Mr. Flynn told counsel the “business activities” reason that originated the project quickly “crystalized” down to “Gulen” which the raw notes show with a V diagram. The later transcription also omits or misinterprets the fact that the op-ed was *pushed* at the time for

20. Former counsel told the General to take time with the draft-- "high level--don't have the detail."³⁰
21. Former counsel advised the government in pre-trial preparation on May 29, 2019, the legal team preparing the FARA registration "did not necessarily go through every doc; were trying to capture the high-level info of who the client was and nature of the work."³¹
22. Current counsel for Mr. Flynn will hereby waive both the attorney-client privilege and the application of the work-product doctrine specifically as to the notes and information provided herein regarding the FARA filing and its preparation.
23. One of the statements in the FARA filing the government alleges as false came directly from information provided to former counsel for Mr. Flynn by counsel for Ekim Alptekin at Arent Fox and was inserted in the filing despite former counsel's concerns with the Arent Fox submission.³²
24. Significantly, former counsel's email of February 20, 2017³³ in preparation for meeting with the Department of Justice recognizes it was all a judgment call made in extensive communication with the NSD:
 - a. "At the same time, we recognize that Gulen is a major focus for the Turkish government, and extradition of Gulen was probably the primary focus of the Turkish government in its dealings with the United States during the period in which FIG was performing work for Inovo."
 - b. "Arguably, the work [by FIG] could be viewed as principally benefitting the Turkish government."
 - c. "But we don't view this meeting [that Alptekin arranged between General Flynn and two Turkish ministers] by itself as resulting in agency on behalf of the government, and there is no indication that the meeting or any other contacts involved the Turkish government *directing* FIG's activities." (Emphasis supplied.)
 - d. "So FIG had a commercial client with commercial objectives, and no *known* foreign government client. This left us [the lawyers] somewhat straining to determine whether registration could be required solely on the basis that the work performed could be construed as principally benefitting the Turkish

³⁰ 02/14/2017 handwritten notes of Brian Smith of Kelner, Verderame, Flynn phone conference.

³¹ Ex. 11, 05/29/2019 typed notes of Kelner interview with EDVA at page 8.

³² Ex.12, 01/21/17, Kelner email; Rafiekian indictment paragraph 58.

³³ Ex. 4, Kelner email of February 20, 2017 to Kristen Verderame and Covington lawyers regarding meeting with Department of Justice.

government rather than Inovo or business interests generally. *We welcome your input on that judgment call.*" (Last emphasis in original.)

3. The Non-Disclosure Order Must Be Vacated as Overbroad and Unconstitutional or Revised and Narrowed.

If any non-disclosure order proves to be needed, it must be narrowed. The order the government obtained on July 3 contravenes the First Amendment. Gag orders are disfavored because they are prior restraints on speech and are content-based speech restrictions. *In re: Murphy-Brown, LLC*, 907 F.3d 788, 796-97 (4th Cir. 2018). Consequently, such an order must survive strict scrutiny. *Id.*

To survive strict scrutiny, the gag order must serve a compelling public interest and, if such an interest exists, the government must show the order uses the least restrictive means. *Id.* at 797-800. A fair trial can be a compelling government interest, if the government was able to show that there was a reasonable likelihood that a party would be denied a fair trial without the order. *Id.* at 797. (citing *In re: Russell*, 726 F.2d, 1007, 1010 (4th Cir. 1984)). The government has failed to lay such a foundation here.

More important, the government cannot show that the order uses the least restrictive means. The order goes far beyond the order struck down in *Murphy-Brown*, which limited the order to extra-judicial statements that could reasonably reach "public communications media." Here the order prohibits Flynn and his lawyers from discussing the matter with anyone, including Mrs. Flynn, government officials, or even other courts. The order is far too broad. Mr. Flynn and his attorneys have no intention of discussing this matter with the press, but any restriction that goes beyond that fails a strict scrutiny analysis. If there is any reason for a non-disclosure order to remain, it should be rewritten to exclude Mr. Flynn and substantially limited so that it complies

conspirator should be denied and the order of July 3, 2019, vacated in its entirety.

Dated: July 8, 2019

Respectfully submitted,

/s/ Jesse R. Binnall

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Counsel for Non-Party Michael T. Flynn

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2019, I filed the foregoing in the office of the Clerk and I will email copies to counsel for the government and the defendant.

/s/ Jesse R. Binnall

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EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

MICHAEL T. FLYNN,

Defendant

Crim. No. 17-232 (EGS)

JOINT STATUS REPORT

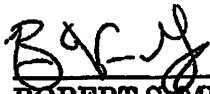
COMES NOW, the United States of America, by and through Special Counsel Robert S. Mueller, III, and the defendant through his counsel, and file this joint status report to provide the Court with the current status of this matter.

1. On December 18, 2018, the Court held a sentencing hearing in this matter. The defendant requested a continuance at that hearing, "to allow him to complete [his] cooperation" in a related case charged in the Eastern District of Virginia ("EDVA"). See Dec. 18, 2018 Sentencing Hearing Transcript, at 46-47. The Court granted the defendant's request and ordered the parties to file a status report by no later than March 13, 2019.

2. At this time, the defendant continues to request a continuance since the case in EDVA has not been resolved, and there may be additional cooperation for the defendant to provide pursuant to the plea agreement in this matter. A trial in the EDVA case is scheduled to begin on July 15, 2019. Accordingly, the defendant respectfully requests that the parties provide a status report within 90 days.

3. The government takes no position on the defendant's request for a continuance. However, while the defendant remains in a position to cooperate with law enforcement authorities, and could testify in the EDVA case should it proceed to trial, in the government's view his cooperation is otherwise complete.

Respectfully submitted,



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BRANDON L. VAN GRACK
ZAINAB N. AHMAD
Senior Assistant Special Counsels



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STEPHEN P. ANTHONY
Attorneys for Defendant

EXHIBIT 2

A.C. - WP - PKC

MF

No other,

Levichs - W. Grant - Levys - Iranian American founder.
 Brianwerth - Alwan - David - American

Adrian - Advice, consult Division development

Introduced Levys to Verizon

Founder Dr. "Reza Sadr" - grew up in U.S.

Dr. Reza Sadr - Advisor to the company
 Indian American Krishna Sarkar

U.S. Company in Massachusetts

Prin. Co. - can find out

Prin. Co. - can find out - F16

Founder may have reached out to government

Division development → Sales and revenue

Found. - Can find
 Vice Chair - Bijan

"Ajami" Alptekin - Senior in Turkish - Iranian American Council

Alptekin Commission - Iranian American New Year

By call rep. Ambassador.

J-1/April 2016 - Initial discussions

Consult for Inovo. Post corp.

Crack could be in Turkish business to meet in Turkey

Agreed to work to Inovo. August 9.

Advising consult services to Inovo. Crack could be in
 meet in Turkey

But Convention - August 5-11 in Terco
 Day 4 Capote and Trapp
 Day schedule

Bijan - Vice chair man 202
 Mike and 35%

meeting hour
 small 21

Mike has LLC for book and speaking

Bijan - Iran American BDS mobilized
 Four weeks at Ex Im
 Second book on climate
 From B. Dady of state of CA.

Nelrose Commission, USA, Iran-American staff

Again - is ~~the~~ Inno.
 Bijan large dinner to FIB.

Coneschi on what we could do.
 Case to DC. Friday afternoon phone calls to Again
 Update on our efforts
 2 x calls ~ 30 minutes each

Again set of meeting in September.
 Minister of Turkey in NY for UNGA
 met 2 minutes - Transportation and Foreign
 re. working, Again, Bijan
 30-45 minutes

RK - Detekt?

MF - only in the engagement - bit

Could not be against En how we'd do what we do
Hend from then on the delays their firing
= 2 months after corp

Research - how are things in Turkey

RK - Golan?

MF - They did. Then we are of necessity

RK - notes?

MF - Don't know of any - Maybe on Turkish side

RK - Have email, from Mike, account
use
Virtue

MF 2

FIG accounts shut down in December except MF

Delegated me and Bijan

Have the stat's backing of Bijan

Can get the file from him

Can access his. Have mine and MF1

Control accounts - Virtue on top of certain emails

He has access to them, we don't

Virtue

RK - Have some emails -

K. weird to sit w/ Turkish Minister?

MFI - yes had just come from other meeting on campaign side.

Talked about where we were @ that time

Were not very far

KW Research into Gulen - ^{near} ~~the~~ ^{Adrian} Brian McLanley

Project confidence 75% report re Gulen ^{principal} ~~former~~ FBI

Plan for Document on what they found, based on the report

Rijan says that report was an idea

RK - Specific content. Credibility of individuals.

Have retained film and production crew

MFI - other emails that show details.

Mike Gustin

RK - Findings and criminal referrals.

Sphere Consulting

MFI - Investigation was conducted

RK - Network in US.

MFI - Sphere sought in by Rijan.

To work video, story. Turkey ok to insert in.

Confidence in the County to insert

RK - opened and ~~some~~ ^{steeper} network, plus criminal referrals

Changes outlined

ME1 Let's take the details to Nija

RK. Bob Kelly - an LDI

ME1 - Sept / August - Abundance of caution
Bob Kelly - register - Don't know what that is
We'll be doing work for them make up
out of my depth
Kelly didn't work on underlying work.

RK - Kelly liked met you

ME1 - yes.

KV - they asked Bob. Debt company.

Nija ~~that~~ told me it was debt company
that is why

Mike Boston responsible to answer.

Nija your prices to everyone

ME1. I can't think day to day
Contract is for 90 days
Decided not to continue

RK. Captain Athenian?

ME1 - Don't know.

KV - Nija has answers. Constructed by email.

Answers - Several copies. Again is cancelled.
Nija said it's to look smart in meetings

KV. Ekin - email; show Turkey
Mike copied on ^{many} of the emails

MF1 by checker if journal packed - few hours only.
KV Akin → Bijan and MF1 - August 4.
Money from Ministry

Bob Kelly - Sub producer - Contract entered "to the project"
Government behind it, and Mike copied.

RK - Call from someone in August.
FARA advice - referred to other lawyer.

MF1 July 19 - Conversation -
Did some spreads on LLC
~~the~~

MF2 - This project. Copy of Bijan as wire transfer
to FIG out to Ekin
Accepted payments from Invoice
Ekin paid

KV - Contract 3 x 200k
Second was 105
Then another 105
Bijan said no PR or lobbying so sent them money back
Hired Ekin to be consultant

MF2 - Never asked or doubted

KV - Trusted Bijan
FIG shut down Nov 30.

MF2. He has the book so up to him. His FIG materials

KV - motive to preserve to delay or denying

MF2 - Bijan acknowledged

KV - I'll delete that delete end of November.

RK - Where is it?

MF2 - Google business - Archive data - yes

It sends you an email of links

RD - Google may still have it? Paid x!

MF2 - yes paid by MFI still has email.

RK - Do anything humanly possible.
Stroz?

MF2 - Have access to his email - last time, names.

Search as many as I can

61 of emails

KV - List of emails say MFI is change
and in party of us.

MF2 - He didn't bring computer to meeting

RK - good.

MF1 - Looked it to go before the election. Slipped out

Will produce it up

I've been very strong on Islam. The page looked like a threat

Russians trying to drive wedge,

Israel in need is friend instead - my title

Political maneuvering on my part. Admin. Lull, our ally - NATO
looking to Russia

Other was ~~secret~~ creating tension

RK - Consider to Inovo?

MFI - Paying close attention to it. just ~~not~~ re thinking
Bank tour in Texas, Ron White

Living Texas Mayor - August - Challenges w/ Galen chadwick
Book on July 12 - records

Write series of eds

RK - where ideas

MFI - Trying to do it. I called ideas - He had other people edit

RK - first draft

MFI - He did.

Talked about ways to ~~reduce~~ project. Conference project.

MFI 2 - Elmer isn't comfortable -

KW - Given doc to review and edit

MFI - Elmer says isn't the whole.

KW Hank Cox. Sphere Consulting - had role in edit
Sphere did the shopping of up ed


(Have 2 pr meeting @ CIA building.

1:07

Break to read documents

1:35

RK - Chief? Control of FIG.

KV 350% ^{MF}  attending shares
 30% ^{BA} 0.5% Dr. Abschi
 25% ochley - family 1.0% Dark shore

MF1 Bijan is aware of letter.

RK - Sphere registered. November

Documents - Gulian, up research, not commercial.

sphere do?

KV - Clipping, consulting - Positioned for the documentary.

RK - State lobbying?

RK - Counsel?

Chinese Wall - P.I.

Outreach Targets email

Oct 19 - met w/ state officials

RK - Persons 2

MF1 Show me the letter

Brian McCauley

Bijan

Mike Boston - only talked to Ekin ≈ 2 x

Paul Bechant → LAB

MF1 spoke of Ekin a handful of times

EXHIBIT 3

KV - ~~spoke~~ spoke before

Demonstrates in email to look at him

W/ trial to read more carefully

RK - David Landman call. HH, CF, on cell.

Unrelated to stuff in the press.

Time to look at our interview - facts

Possible draft registration. To discuss at client

When talking? he asked call and let us know able to talk.

Read it: File or subpoena may follow.

If file, possible things. Still look. Tahn = lot of wind away.

Focus is whether you register. Counsel audit the filing

Subpoena less likely.

yes - yesterday?

RK - yes.

RK - Where we are. Told them in Jan we expected to file.

Email, docs, interview - little evidence of business/financial.

Except after the fact letter

not discussed previously - after the fact.

Talk to people involved. Little on oil field.

Focus on Gulon, and a drive out little house on Gulon / Turkey

Meeting / put in September - trial de confidence.

Op-Ed. distributed by Spence - paid things contract.

Op-Ed. on same topic -> balance

LOA - only if Turkey not demanding and not prin. bearing

Email - green light Brian invest, not confidence.

Other view - Elnor / Petri, business, green light unrelated.

We could fight it out. balance likely pursue. Court. expensive.

might win - but big fight

Media storm. Conspiring theories, etc.

Conference of Flynn

2.14.17 4:30 pm

RK, KV, M Flynn, Lori

- Payments added to chart
- ~~Factor~~
- Went this far being factor
- FOIPA interconnected

MF - Filling Lots - Legality

Smart thing to file be precise.

RK - Take time with the draft.

High level - don't have the detail.

Goals to explore?

Meet w/ Heather w/ the document.

Address any of her concerns.

Can send cover letter. Simple letter summarizing the position.

Cojant explanation off our position.

Control of public statements: Interconnected. Can all blow back.

EXHIBIT 3-A

02-14-17 Brian Smith notes. Phone call with RK, KV, MF and LORI.

KV: Spoke before

Documents in email to look *Ekim*?

***w/ final?* to read more carefully**

RK: David Laufman call. HH, CR on call.

Unrelated to stuff in the press.

Time to collect and interview – facts.

Possible draft registration. Decision of client.

When talking? He asked. Call and let us know able to talk.

Read it: File or subpoena may follow.

If file, possible they'll still look. Take a lot of wind away.

Focus is whether you register. Could audit the filing.

Subpoena less likely.

MF: YESTERDAY?

RK: Yes.

RK: Where we are. Told them in Jan we expected to file.

Emails, docs, interviews – little evidence of business/commercial.

Except after the fact letter.

Not discussed previously – after the fact.

Talk to people involved. Little on oil field.

Focus on Gulen, at time of FIG? focus on Gulen/Turkey

Meeting with government in September – tied to Confidence.

Op-ed distributed by Sphere – paid through contract.

Op-ed on same topic → Gulen

LDA only if Turkey not directing and not principle beneficiary.

Email – Green light. Bijan insists, not Confidence.

Other view – Ekim/Ratio, business, green light unrelated.

We could fight if _____. Would likely pursue. Court. Expensive. Might win
– but big fight

Media storm. Conspiracy theories, etc.

MF: Filing late – legality.

Smart thing to file. Be precise.

RK: Take time with the draft.

High level – don't have the detail.

Gaps to explore?

Meet w/Heather with the document.

Address any of her concerns.

Could send cover letter. Simple letter summarizing the position

Cogent explanation of our position.

Careful of public statements. Interconnected. Can all blow back.

Notes in upper right corner: Payments added to chat.

Kept this from being factor

FCPA interconnected

EXHIBIT 4

Smith, Brian

From: Kelner, Robert
Sent: Monday, February 20, 2017 11:12 PM
To: 'K Verderame'
Cc: Smith, Brian; Langton, Alexandra; Anthony, Stephen
Subject: Outline for DOJ Meeting

PRIVILEGED & CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT

26th
Drafts
Reason for delay
NOA exception prior

Here is an outline for what I propose to cover tomorrow at the meeting, though obviously they may lead us in other directions:

We wanted to come in, as we have done before potential retroactive filings for other clients, to walk through the draft filing and solicit any input, so that we could address any issues with the draft. But in this case, as we discussed with Heather, we also wanted to talk through the arguments for and against filing a FARA registration, in the circumstances presented here, to get the Unit's input.

We've addressed in the draft we brought with us the answers to the various questions you had in your letter. And I can walk you through those answers today. Let me do that briefly now.

[Walk through each question and our response]

The client that engaged FIG, Inovo BV, is a Netherlands based corporation. A business consulting firm. Its CEO, Ekim Alptekin, a US-Dutch citizen, indicated that he was interested in restoring confidence in the Turkish economy, and he viewed Mr. Gulen and his followers as an obstacle to that. Although FIG did know that initially Mr. Alptekin was in touch with the Turkish government about the possibility of engaging FIG, Alptekin ultimately engaged FIG directly through Inovo and indicated that the Turkish government would not be involved in directing or funding FIG's engagement.

FIG agreed to conduct research from public sources on Gulen and to develop a video based on the research, which could be disseminated through a PR firm that FIG would retain.

After a contract was executed in August 2016, FIG engaged various independent contractors who conducted the open source research and began preliminary work on the video. FIG later retained a PR firm, Sphere. Sphere engaged in some federal and state level outreach to public officials, engagement with the media, and preparation of a monopoly themed graphic about the Gulen organization, called Gulenopoly. FIG also engaged in some outreach on the Hill regarding Gulen, including a meeting with Chairman McCall's staff.

Originally, the expectation was that the initial 3-month contract would be extended so that the research and video could be disseminated. But the contract was allowed to lapse on Nov. 15 without being extended, in light of the expectation that Gen. Flynn would join the administration. FIG suspended operations in mid-November 2016 and began to shut down. To the best of FIG's knowledge, FIG's research and the early work on the video was not disseminated by FIG. We do not know what Inovo may have elected to do with work product that was in its possession. We have seen, for example, Gulenopoly popping up on social media and in publications such as The Hill. FIG is not involved in circulating Gulenopoly to the best of our knowledge.

As noted, toward the end of the initial contract period, General Flynn himself wrote an op-ed about Gulen. He was not asked to do this. He viewed this as something he was doing on his own. But the subject matter overlapped with the work for Inovo, he did seek input from Alptekin, and FIG did ask Sphere to place the article.

Based on this fact pattern, a credible argument could be made that registering under LDA, as FIG did, was sufficient, under the terms of the LDA exemption to FARA registration.

At the same time, we recognize that Gulen is a major focus for the Turkish government, and extradition of Gulen was probably the primary focus of the Turkish government in its dealings with the United States during the period in which FIG was performing work for Inovo. This raises the question of whether the Turkish government is the principal beneficiary of the work for Inovo, within the meaning of the Department's regulation applying the LDA exemption. Arguably the work could be viewed as principally benefiting the Turkish government.

During the course of performing work for Inovo, Aptekin arranged for General Flynn to meet two Turkish ministers while they were visiting New York. But we don't view this meeting by itself as resulting in agency on behalf of the government, and there is no indication that the meeting or any other contacts involved the Turkish government directing FIG's activities.

After the post-election publicity about FIG's work for Inovo, and after we received your letter, FIG also received a letter from Mr. Alptekin's counsel at Arent Fox. Arent Fox asserted that Inovo had retained FIG in connection with Mr. Alptekin's business dealings with an Israeli company that was involved with the Leviathan oil field.

So FIG had a commercial client with commercial objectives, and no known foreign government client. This left us somewhat straining to determine whether registration could be required solely on the basis that the work performed could be construed as principally benefiting the Turkish government rather than Inovo or business interests generally. *We welcome your input on that judgment call.*

[Then, depending on their response, distribute draft filing for discussion]

If they ask about the reported payments to Inovo, I expect to respond as follows:

We did see two payments of 40k each to Inovo. We've included them in the filing as they appear in accounting records. Early on, there was a proposed consulting agreement for Aptekin. These payments, based on available records, appear to tie to that contract. But we have also been told that while Aptekin did not end up playing a role as a consultant on the project, he did nonetheless want part of Inovo's funding of the project to be refunded. The details of the arrangement are not particularly clear, amid the shut down of operations. [Beyond that, I will punt for now, if they press.]

Robert Kelner

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T +1 202 662 5503 | rkelnr@cov.com
www.cov.com

COVINGTON

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EXHIBIT 5

meeting to
Review of draft

HH - Things we saw it block look e there issues

2/22/17

1. Residence addresses. Apparently only not listed.

NOON

not a separate request.

Put in the filing - redacted.

Put on the form "Provided separately to DOJ"

and submit in letter

Redact in Exhibit C. also.

Leaning toward Registration - principle benefiting Turkey.

Will give it more thought, then definitive view.

Probably needs there. Make decision now.

Want something in writing?

Reluctant to file in USA note

Revise home
addresses

Request redaction
of exhibit C

Register -
written?

2. Re, 2005

9 retraction - part on there

60 days prior

Add retraction
note to 60
day look back

60

Because retraction. Receipt / Disbursement, appear on supplement.

"to the filing of the statement" - problem

1. 13-16

Budget established.

yes - Attachment -

#13 No - no separate budget

Look again @ Spence contract - anything specific

No on budget

check if
info provided
budget
clearly not.

13-16 - check e box - even if "other"

Check whether
they have
this not

Check Hm. Exhibit A.

to Albania

However, Consul from Turkey to Albania?

Check

If Turkey, list it

meeting of officials.

Add in New York

Add any

Luciani

(per)

2 spots

All in #11 of Supp. Submitt.

Chiff

#15

Payments to Insure of 40

Payments

to Insure

space

TP Return of meeting?

(AP)- note e top
still looking not clear)

Sphere

Woodruff

filling

Sphere draft?

Reach out to them

Happy to look @ draft for them for

same format

Woodruff

HHH. Gtm to be @ same time.

(A)

Exhibit

Inter

de

HH/Chiff

Es B

- Gtm not mentioned

de to put in Supp.

Part of McLean

meeting

Two

Supp

- McLean meeting date possible?

Various state

governors

→ date looking if possible

governor, Legislature.

Details on State

meeting

filling for

Sphere

Logisti - RL by email

so they can handle the timing and
publication

for by
email ✓
Covisa check

Send check for fees - Covisa = checks

we can still write sphere further filing

EXHIBIT 6

KV- Mick^(?) - pressing for interview

Sarah Flaherty, Ryan new PR person

Questions about F/G creation and clients

Call with

Kristen V. & RK

1-26-17 noon.

RK - Don't say anything until file.

My box is in if talk now.

KV - Might talk of him.

RK - Ben Ginsberg. Spheres doesn't read the ~~gas~~ register.
based on Arent Fox memo.

KV - How get

RK - Don't know.

No argument that Calum Flaherty was for commercial purpose

No evidence of commercial except underlying statement

On top of that GOT had role of some kind

Meeting in NY - Elens & Ministers.

Other ~~the~~ docs. - They asked to see.

Read: Green light and 2 emails on NY/Confidence

Foul like if they don't file and we do.

Ben Ginsberg. Aggressive guy

There is an argument that they gave beyond statute.

False to Lidgate - we're not in position to Lidgate

And we have bad facts - No commercial facts.

Datt - Can't file tomorrow.

Then need to talk of Greenal.

Media storm

KV - He doesn't care what they print.

Trump!

RK - Andy Donaldson, his deputy

KV - ~~Don~~ bank clearance person - approval form.

Call, trying to find out if he went through process.

PK - In theory, draft, give in knowledge. Must bring - follow & report.

Videographer - not given per email

Can Host - did we pay

Rudy

List of people involved - Alex - w/ description

Max - I does - 2 NY

1 (man) Ljmt

Other MRA?

EXHIBIT 6-A

EXHIBIT 6-A

Transcribed by Sidney Powell from Brian Smith handwritten notes of 1-26-17 call with KV and RK at noon

KV- Mick? – pressing for interview

Sarah Flaherty. Flynn new PR person

Questions about FIG creation and clients

RK – Don't say anything until file

May box us in if talk now

KV – Might talk w/ him

RK – Ben Ginsberg. Sphere doesn't need to register.

Based on Arent Fox memo.

KV – how got

RK – don't know

No argument that Gulen focus was for commercial purpose

No evidence of commercial except conclusory statement

On top of that GOT had role of some kind

Meeting in NY – Ekim and ministers

Other docs – They asked to see.

Read: Green light and 2 emails on NY/Confidence

Foolish if they don't file and we do.

Ben Ginsberg. Aggressive guy

There is an argument that Reg goes beyond the statute.

Fine to litigate – were' not in position to litigate

And we have bad facts – No commercial facts.

Draft – can't file tomorrow.

 need to talk w/ General.

Media storm

KV – He doesn't care what they print.

Trump?

RK – Andy Donaldson, his deputy

KV – DOD book clearance person – approval form.

Calls trying to find out if he went through process.

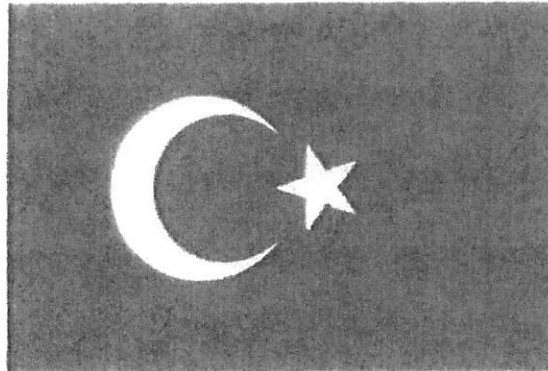
RK – In ? , draft, gaps in knowledge. things – ? To report.

[a few more lines not apparently relevant]

EXHIBIT 7

"Working Papers"
mbbk.docx

11/5/16



Statement of the Problem

How do we restore confidence in the government of the Republic of Turkey
and expose the Fethullah Gülen cult in the United States?

Facts Bearing on the Problem and the Gülen Ecosystem

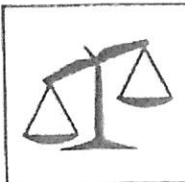
Where we were on August 15, 2016	Where we are on November 4, 2016	Where are we headed?	How will we get there?
<p>Facing a global, strong, well masked, well funded network that enjoys tacit support in the executive and legislative branch of the U.S. Government.</p> <p>Public perception is in his favor.</p> <p>Legal battles against the irregularities or possible illegal activities in his charter schools are overlooked, pushed over and not successful.</p> <p>Strong support in Congress.</p> <p>Almost TEFLON. No one wants to see him as who he really is.</p>	<p>We are changing the narrative FROM:</p> <p>An aging man of God who is fighting an autocratic leader in his home country while running a network of charter schools with high quality education.</p> <p>TO:</p> <p>FG is a terrorist. He is a follower of Hasan Al Bana and <u>Sayed Qutb</u>, Founder of Muslim Brotherhood. U.S. taxpayers are funding a masked terror organization. Math and Science and English teachers from Turkey are here to brainwash our youth. He is perfecting the first phase of Jihad. Preparing the battlefield to unleash his "soldiers" at the right time.</p>	<p>Changing the public perception.</p> <p>Educating Congress.</p> <p>Exposing Turkey's Usama Bin Laden.</p> <p>Building U.S. grassroots support to expose the true face of FG.</p> <p>Documenting the story in two effective ways:</p> <p>A three minute video teaser showing the true face of FG.</p> <p>A 60 minute video that will be sent to all members of congress and selected USG.</p>	<p>DISCOVER AND DISPLAY</p> <p>Expose FG as a strategic national security threat.</p> <p>Deep open source intelligence</p> <p>Very senior voices with unique authority on the <u>subject</u>. Remove doubt.</p> <p>Formal congressional hearings at Foreign Affairs and Homeland Security Committees</p> <p>IRS Immigration Homeland Security</p>

Public and Congressional Perception of Gülen



STATUS QVO = EASY TO BELIEVE

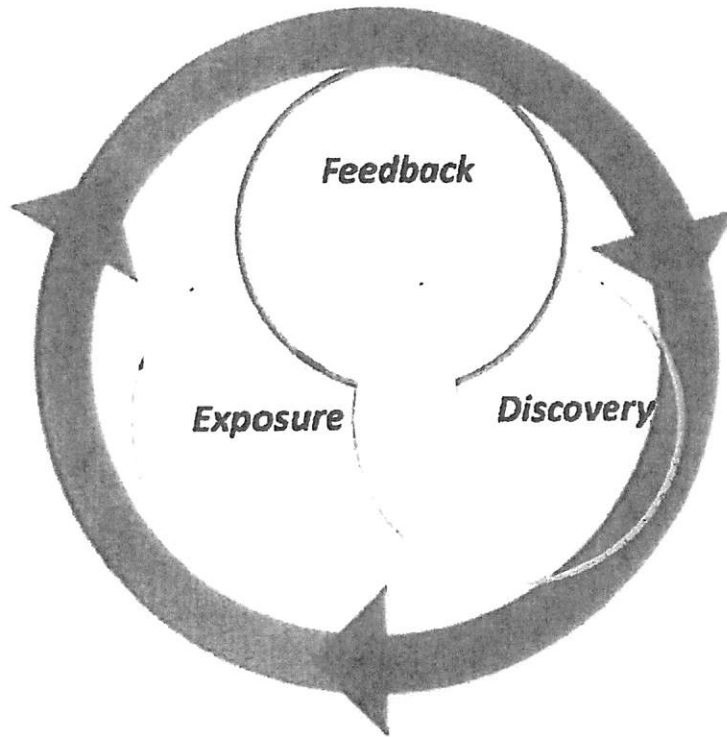
- POLITICAL PROTECTION
- DISSIDENT
- OLD MAN
- IMAM

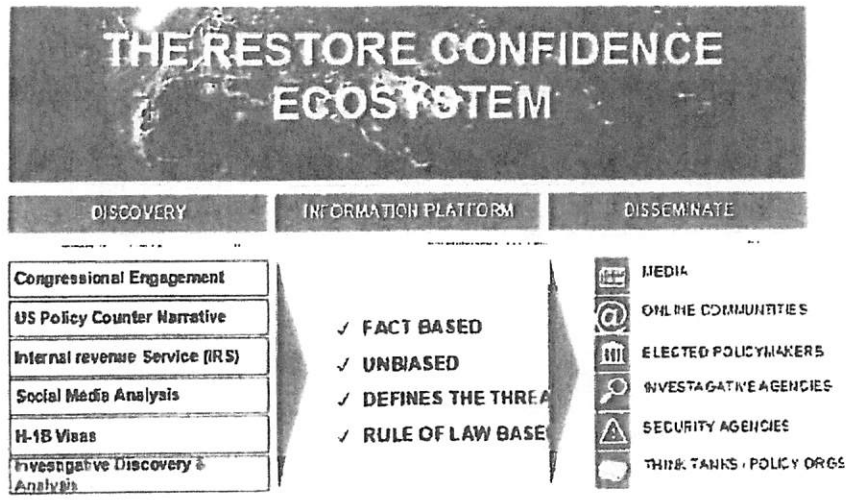


REALITY & FACTS = HARD TO BELIEVE

- COMPLEX NETWORK
- SECURITY RISK
- GLOBAL REACH

Our Roadmap Philosophy





We accomplish discovery by examining the following:

- Public Perception
- Tom Neers' "looking behind the curtain" - First Phase of Jihad
- Congressional Action/hearings
- IRS, Tax irregularities and Non-profit status
- Immigration- H1B Visa's
- 1782 Process of discovery

We expose by:

- Producing a 3 minute video with Sebastian Gorka, Philip Haney, Clare Lopez and Mike Flynn and selected other highly credible voices.
- Bring to the attention of US government agencies-IRS, INS, and DHS potential Rule of Law/Criminal wrong doing

- **Produce a longer, in depth video**

Talking Points

Phase Zero

Define the subject's sphere of influence, advantages and vulnerabilities. Design an effective strategy with tactical and strategic goals.

Findings:

INFLUENCE

The subject enjoys widespread support in congress. There is little or no real opposition to the subject's presence or activities. There are strong indications that the subject has built strong advocacy on the Hill. Likewise, there are strong indications that the subject has built an influence network in a number of key states. The public perception about the subject is generally positive.

ADVANTAGES

The subject is widely viewed as a legitimate political dissident seeking refuge in the United States. The request for extradition has raised the subject's public appraised value. This action has created even a stronger shield for the subject. Consolidation

and centralization of power by the leadership in the subject's home country provides an easy conclusion by the public that he is an old man of God despised by an authoritarian leader in his home country. Any criticism of the subject's acts is immediately interpreted as "political pressure", illegitimate "smear campaign" and unjust attacks on a nice old man. Our asymmetric assessment indicates that an announcement lifting the extradition request by the home country will reduce public appraised value of the subject. This action, if executed will open the space necessary for public scrutiny of the subject's activities. This action will reduce the subject's shield of legitimacy as a political dissident. The Extradition request has made the subject a lot more important than he really is.

VULNERABILITIES

The subject organization operates over 150 U.S. tax payer funded charter schools in 28 states. There are a number of irregularities in the operation of said schools. Legal professionals have shed light on these irregularities in the states of Ohio and Texas. Importing teachers from Turkey presents a number of easily observed irregularities that may prove to be direct violations of U.S. law. Creative/improper financial operations by the subject's organization offer a strong opportunity to unmask the true nature of dangerous, strategic activity under the guise of education. There may be illegal political contributions to political campaigns and nonprofit organizations also pose a potential vulnerability which will be

explored. When the subject's methods are compared to theoretical and historical teachings of Islamic Political activists of Hasan Al Banna, founder of Muslim Brotherhood (1928), Sayed Qutb (1950s-1960s), and deeper in the history, Hasan Sabbah (late 11th century), there are strong indications that the subject is very likely conducting the first phase of Jihad by slowly building a global loyal force to be activated at the right time. Subject lectures provide easily observed indicators of his long term objective. The resemblance of the subject's activities to Ayatollah Khomeini who duped the west in believing that he was a man of the cloth and a benevolent servant of the people serves as a basis to uncover and unmask the subject's ultimate goal of destabilizing his home country and the region.

TACTICAL and STRATEGIC Countermeasures

Devise specific actions to restrict the subject's influence. Exploit the vulnerabilities and reduce the systemic advantages enjoyed by the subject to open space for strategic goal on unmasking the subject's ultimate goal. We have determined that unmasking the subject's true objectives requires unmasking his most visible violations. Tactically, we will search, find and expose the subject's clear violations, influence operation, financial irregularities, illegal contributions, and violations of immigration law. As the legal professionals uncover and engage the subject's activities in the legal arena, we will expose the subject in the public arena. Concurrently with our tactical engagement,

we are producing a short video suitable for quick and wide distribution to key influence providers to the subject including but not limited to members of congress and key law enforcement agencies. Our strategic communication advisors have confirmed our plan that it is essential to have an easy to access, portable (easy to distribute) means of educating the influence providers to the subject. The ultimate aim of the video production is to ask the question:

IS THE SUBJECT ENGAGED IN THE FIRST PHASE OF JIHAD?

PHASE ONE

Operationalize the plan. Harmonize Cyber Research, Field Investigations, Strategic Communications and Congressional outreach.

ACTIONS

- Identified key organizations and individuals in the subject's critical circles.**
- Engaged subject's key supporter in Congress. No major change of position by the supporter. However, feedback suggests that the supporter is alarmed by receiving additional relevant, fact based information and is likely to reduce support for the subject.**
- Briefed senior staff at the Homeland Security Committee with the aim of organizing a hearing on the subject's activities and strategic aims.**

- Have deployed an experienced videography team (brand names Aljazeera, France 24) and a former CNN Anchor to create credible, durable, easy to distribute document in the form of a short video.
- Have interviewed/created effective footage of three victims of the subject's activities in his home country
- Have secured the opportunity for testimony by experts on the subject's masked activities, Sebastian Gorka, Phillip Haney, Steve Emerson and other credible witnesses who are authorities on the subject of political Islam, Islamism and Jihadism.
- Our investigation team is engaged in the field within the boundaries of U.S. law.
- Our Cyber research team is also engaged within the boundaries of U.S. law.
- There is a total of 5 professional investigators in the field headed by our principal in charge of investigations.
- Cyber research team is comprised of 3 highly skilled professionals.
- The strategic communications team is actively reviewing and designing a creative tool to convey the masked operation of the subject. We expect the tool to be fully developed and ready for distribution in short order.

The aim of the investigation is to uncover indisputable unlawful activities of the subject and his organization and make a criminal referral.

Operationalize the plan Harmonize Cyber Research, Field Investigations, Strategic Communications and Congressional outreach.

Our ongoing research has concluded that the schools were the brainchild of the iconic, but reclusive, 75-year old subject, a Sunni Muslim cleric from his home country whose has a reported 3 and 6 million followers who regard him as their spiritual leader. The subject's movement in his home country is known as Hizmet. For the past 17 years, subject has resided on his highly protected country estate in the shadows of the Pocono mountains near Saylorville, Pennsylvania. To his advocates, subject is a pious imam who promotes a tolerant Islamic view stressing the importance of hard work, benevolence and education. To his detractors, he is powerful and crafty politician committed to overthrowing the existing order in his home country. In the US, he was barely known, except to teachers and students who have defected from his schools, concerned parents, and to auditors for Charter schools,

grant providers, public official's and even to investigative agencies such as the FBI, concerned about possible fraud and other criminal violations until the most recent coup attempt in the subject's home country.

It should be noted that the term "subject's name schools" is actually a misnomer and is not used by the schools themselves, although for simplicity, we will use this term hereafter to refer to the general aggregation of these schools. In states where the subject schools have the greatest presence, they use innocent sounding names such as Harmony Schools (Texas), Magnolia Science Academy (California), Horizon Schools (Ohio, Illinois), and Sonoran Science Academy (Arizona).

Many people do not realize that merely being a supporter of subject schools is not a crime. In fact, during the past several years, many members of Congress (bipartisan) have been courted by subject schools, even taking paid trips to subject's home country, to meet with subject adherents extoling the virtues of their schools. Many graduates of these schools, though precise numbers are seldom reported, reportedly move on to college and successful careers. The Bill Gates Foundation has reportedly made a sizeable donation to subject schools, and the Cosmos Foundation appears to be the largest benefactor. President Obama reportedly visited and praised the work being done in the Harmony School in Washington, DC

The creation and operation of subject schools in the US appears to be the result of a broad strategy that involves the use of a sophisticated business model with complex organizational structuring, multiple layers of private and public funding, clever marketing, and aggressive legal representation in the context of an educational system that by its very design, though certainly not intended, is ripe for abuse and exploitation.

- **Continue to identify key organizations and individuals in the subject's critical circles and areas of influence.**
- **Continue to 'flesh' out the details to brief the senior staff at the Homeland Security Committee with the aim of organizing a hearing on the subject's activities and strategic aims with an optimistic timeline of before the Christmas recess, with a realistic timeline of January 2017. Our team is already in the process of preparing relevant material which highlights the subjects**
- **The videography team (brand names Aljazeera, France 24) and a former CNN Anchor are reviewing and having footage subtitled in English of the three victims of the subject's activities in his home country.**
- **Our investigation team is engaged in the field within the boundaries of U.S. law.**
 - **Develop spreadsheet of U.S.-based subject schools to include when opened or, if closed, reasons why.**
 - **Compile history of criminal or civil suits against subject schools.**

Locate and review both pro-subject & anti-subject websites to identify perspectives, biases, and methods used by the latter to support their stated intentions.

- **Identify political leaders at the local and national level who are either supporting or criticizing subject schools, and summarize their respective arguments**
- **Identify journalists reporting on subject schools and explain their unique areas of focus**
- **Our Cyber research team is also engaged within the boundaries of U.S. law and is conducting baseline monitoring of a multitude of Social and traditional Media sites.**

Subject Related Websites:

- gulenmovement.ca
- fgulen.com/en
- gulenmovementca.blogspot.ca
- fethullah-gulen.org
- fethullahgulenforum.org
- gulenmovement.us

Associated Hashtags:

- #GulenMovement
- #HizmetMovement
- #FethullahGulen
- #Hizmet
- #gulenistes
- #NeverForgetJuly15
- #FETO

Associated Social Media Accounts:

- facebook.com/GulenMovementCanada
- plus.google.com/+FethullahGulenEN

Associated You Tube Accounts:

- youtube.com/channel/UCDfIDhRLi7M32qylaRImQtQ
- youtube.com/channel/UCykpGY1yIAF6rP1zuWTJC2A

- youtube.com/channel/UC-5_J80Fi7lr92C8h8mmevg

He's in the News:

- dailysabah.com/war-on-terror/2016/10/12/3-gulen-linked-charter-schools-in-california-face-closure
- latimes.com/local/lanow/la-me-edu-magnolia-charter-ties-to-gulen-20160829-snap-story.html
- dailysabah.com/war-on-terror/2016/10/10/us-must-show-turkey-empathy-over-gulens-extradition-justice-minister
- dailysabah.com/war-on-terror/2016/10/10/iraqi-kurdish-administration-seizes-schools-run-by-gulenists
- reuters.com/article/us-un-assembly-turkey-erdogan-idUSKCN11Q2K5
- france24.com/en/20160916-turkey-coup-fethullah-gulen-extradition-how-will-us-respond
- dailysabah.com/war-on-terror/2016/09/15/top-eu-officials-admit-regret-over-failure-to-grasp-feto-threat
- dailysabah.com/war-on-terror/2016/09/09/pkk-terrorists-informed-about-gulenist-coup-attempt-in-advance
- shaber3.com/manmadiniz-aldattiniz-sayin-bozdog-haber/1273365
- lehighvalleylive.com/news/index.ssf/2016/07/rare_look_at_exiled_turkish_cl.html

Charter Schools:

- Website:
- charterschoolscandals.blogspot.com/p/list-of-us-gulen-schools.html
- Last Updated 12/7/2015

60 minutes:

- [youtube.com/watch?v=ktl-IDnM7I](https://www.youtube.com/watch?v=ktl-IDnM7I)

Ties to Clinton:

- dailycaller.com/2016/07/13/new-ties-emerge-between-clinton-and-mysterious-islamic-cleric

- **The strategic communications team has developed a very complex approach to their efforts which include a Strategic Objectives; Target Audiences, and Activities and Timing.**

They are actively designing a creative visual tool to convey the masked operation of the subject. A copy of the initial draft is done and is attached. We expect the visual tool to be fully developed and ready for distribution in short order. The draft "wireframe" version of the board and a citation document which provides public record of the "accusations" within the board. We welcome any and all feedback and will continue working to build out a more "produced" version with graphics, etc.

- **Active engagement of media outlets.**
 - **Drudge Report and have followed up with several different articles and angles. (Clinton foundation connections, etc.) Drudge Report has an unprecedented active readership and even if they don't use this development, they are confident the outreach this week will serve as a strong foundation for future coverage.**
 - **Politico Morning Education - We have also compiled this week's coverage of both Ohio and California (LA TIMES) coverage in hopes of inclusion in tomorrow (Thursday) morning's daily email. Politico is a leading policy outlet and the "Morning Education" email is a subscription based news aggregator received by top education policy influencers in DC and the around the country. See attached PowerPoint slide with a screen shot of this coverage.**
- **Teachers Unions - Teachers unions are a ripe ally in this project given their automatic resistance to all things related to charter schools. While our most impactful messaging might be on the homeland security front, the education/teachers angle could be a valuable flank that**

appeals to Democratic policymakers, whereas Homeland Security might appeal more to Republicans. As such initiated contact today with:

- **Gene Bruskin, formerly of the American Federation of Teachers and author of "The Story Behind the subject Charter Schools and Their Reclusive Founder". Have requested a phone meeting to compare notes and gauge his interest in participating in and assisting with the organization of an effort to coalesce issue experts in his field to persuade policy makers to take action. Updates to follow.**
- **Policymaker Fact Sheet - Producing a briefing document ahead of policymaker meetings. An initial draft is complete and attached.**
- High Ranking State Level Elected Official - Engaged in conversation with a high ranking elected official in a state with multiple subject Charter Schools. He is "extremely interested" and we are briefing him soon, but wish to keep this outreach confidential at the moment per his wishes.**

GULEN BRIEFING SHEET

Background:

In the wake of the recent attempted coup in Turkey, new focus and scrutiny has been applied to Fethullah Gulen, a Muslim cleric living in exile in rural Pennsylvania. The Turkish government considers the man a terrorist and has petitioned the U.S. government for his extradition. Gulen has millions of global followers, known informally as the Hizmet, meaning service, or the "Gulen Movement". The Movement's primary source of funding is its network of schools around the world. Over 150 of these are US Charter Schools that have used taxpayer dollars to expand their operations into 26 states.

Fethullah Gulen is a radical:

- In his sermons in the 1990s, Gulen urged his followers to infiltrate the Turkish military, media, and government and wait for the right moment to rise up, ordering them to "move within the arteries of the system, without anyone noticing your existence, until you reach all the power centers." Gulen promised that doing so would provide *"the guarantee of our Islamic future."*
- Despite his seeming moderate position, at times, Fethullah Gulen has called the United States his *"merciless enemy."* Additionally, he has claimed that the Jews are responsible for ideas like Communism that have purposefully steered the world towards cataclysm.

Gulen Controls a network of corrupt US Charter Schools:

- Gulen-associated schools participate in a process called "closed-loop leasing," where the charter schools use taxpayer money to pay excessive rent to a Gulen-associated real estate corporation. The real estate corporation funnels those profits back to Gulen or uses the funds to start more schools.
- Gulen-associated schools exploit the H-1B visa program, which are to be used when there are no qualified American workers, to bring Turks to the United States as teachers. In 2009, the Gulen schools received government approval for 684 visas, over 200 more than Google. Parents and other teachers have complained that the Turkish educators are clearly unqualified.
- Gulen-associated schools have been investigated by authorities and journalists in the states of Ohio, California, Texas, Louisiana, Illinois, Massachusetts, Virginia, Pennsylvania and Georgia, as well as by the FBI, for a litany of offenses, including the misappropriation of funds, the falsification of standardized tests, immigration fraud, and bid-rigging.

Gulen is Politically Powerful and Influential in the US:

- In 2002, Fethullah Gulen applied for permanent residence in the United States, claiming that he was an "exceptional individual" who deserved special consideration. His application was denied, but a few years later, Gulen won his appeal with the help of letters from George Fidas, a former director of outreach for the C.I.A., Morton Abramowitz, a former American ambassador and Graham Fuller, a former senior C.I.A. official.
- This was a surprising development after an American diplomat in Turkey had cabled to Washington about Gulen's sharply radical past as an Islamic preacher, the cult-like obedience that Gulen demands, and his involvement in the affairs of almost 100 countries.
- The Gulen movement has illegally financed Congressional travel abroad and provided hundreds of thousands of dollars of improper campaign donations to congressional and presidential candidates.

- Gulen's chief liaison to New York, Recep Ozkan, donated between \$500,001 and \$1,000,000 to the Clinton Global Initiative.

Responsible for the attempted Coup in Turkey:

- Western diplomats have called Erdogan's accusations of Gulenist involvement "compelling," saying that "Gülenists played a credible role in [the coup]."
- General Hulusi Akar, the highest ranking member of the Turkish armed forces and a captive during the July coup, has claimed that his abductors offered to put him in touch with their opinion leader, Fethullah Gulen.
- Several plotters have released statements identifying themselves as loyal Fethullah Gulen and claimed that the coup was in response to an imminent crackdown on Gulenists in the Turkish military.

Statements by Senior US officials:

President Obama: President Barack Obama and Turkish President Tayyip Erdogan discussed the status of U.S.-based cleric Fethullah Gulen, blamed by Turkish authorities for masterminding a recent failed coup, during a call on Tuesday, the White House said.

The Turkish government has filed material in electronic form about Gulen with the U.S. government, which has been waiting for a formal extradition request, White House spokesman Josh Earnest said.

U.S. officials have said Turkey must provide proof that Gulen was involved in the coup attempt. Any extradition request from Turkey, once submitted, would be evaluated under the terms of a treaty between the two countries, Earnest said.

Obama offered U.S. assistance for Ankara's investigation into the attempted coup and pressed Erdogan to proceed according to the democratic principles outlined in Turkey's constitution, Earnest said.

"The principles of democracy should be adhered to even as a thorough investigation is conducted," he said.

The U.S. State Department said it was still in the process of analyzing the documents submitted by Turkey and could not characterize them as an extradition request for Gulen.

Source: <http://www.reuters.com/article/us-turkey-security-usa-extradition-idUSKCN0ZZ23E?l=0>

Anthony Blinken: Question: We see that the U.S. government is taking Turkey's request regarding the return of Fethullah Gulen seriously. Do you agree with Ankara that this topic may damage Turkish-American relations?

Deputy Secretary Blinken: We are determined to do everything we can to help Turkey as it pursues its investigations of those responsible for the attempted coup. And with regards specifically to the case of Mr. Gulen, we've had an exchange of experts visiting both Turkey and the U.S. – legal experts, so that Turkey fully understands the legal process that's involved. I just want to be very clear, this is not a political question at all for the United States – it's simply a legal question. We have laws and requirements when it comes to the extradition of any person from a country with whom we have an extradition treaty and we need to work through those legal requirements. But we've had very good exchanges with Turkey on this question and we're working through the information that's been provided. Source: <https://tr.usembassy.gov/deputy-secretary-antony-blinkens-interview-ntvs-ahmet-vesiltepe/>

Ambassador James Jeffrey: U.S. Ankara Ambassador James Jeffrey, on Dec. 4, 2009, briefed in regards to Gülen's application for Permanent Residence status in the U.S., with a background about Gülen and his movement. Saying that Gülen faced charges in Turkey of plotting to overthrow the state, Jeffrey mentioned a sermon in 1986, where Gülen is heard declaring that "our friends, who have positions in legislative and administrative bodies, should learn its details and be vigilant all the time so they can transform it and be more fruitful on behalf of Islam in order to carry out a nationwide restoration." Holding a Green Card now and living in Pennsylvania's Pocono Mountains, Fethullah Gülen was doubted to have infiltrated the TNP, and they "have found no one who disputes it."

Additionally, Jeffrey found out that the "TNP applicants who stay at Gülenist pensions are provided with the answers in advance of the TNP entrance exam." Apart from that, even more subtly, "Gülen's lack of transparency creates doubt about his motives and leads to suspicions about what lies ahead," Jeffrey says. As for the aspects of concern in the allegations that the U.S. government is somehow behind the Gülen Movement, Jeffrey concluded that "the U.S. is not 'sheltering' Mr. Gülen and his presence in the U.S. is not based on any political decision." Source: <http://www.dailysabah.com/war-on-terror/2016/08/02/a-decade-of-the-gulen-movement-on-wikileaks-more-than-meets-the-eye>

Stuart Smith: The Gülenists' penetration of the National Police (TNP), media outlets and their record of going after anyone who criticizes Gülen were among the items on the annual agenda of the U.S. Embassy in Ankara in 2005, when a decision by U.S. immigration authorities for the first time denied him the right to travel outside of the country. Stuart Smith, the U.S. vice consul general of the

Intelligence Department in Ankara, reported that three ranking TNP asked for a meeting with the Istanbul legate as a means of asking whether the "FBI could provide some sort of clean bill of health" for Fethullah Gülen. Upon such a request, Smith juxtaposes some concerns about the Gülen Movement's actions: "Severe pressure on businessmen to continue to give money to support Gülenist schools or other activities," "using their school networks to cherry-pick students they think are susceptible to being molded as proselytizers and to indoctrinate boarding students," "the cult-like obedience and conformity" the movement insists on its substructures. Source: <http://www.dailysabah.com/war-on-terror/2016/08/02/a-decade-of-the-gulen-movement-on-wikileaks-more-than-meets-the-eye>

Deborah K. Jones: A cable, with a more suspicious and questioning tone, classified by Consul General Deborah K. Jones on May 23, 2006, clarifies that U.S. authorities in Turkey started to count Gülen Movement's institutions and academies in the U.S., Central Asia, Caucasus, Russia, the Balkans, Africa, South East Asia, the Far East, the Middle East and Europe. Furthermore, the cable shows that a profile recognition for those traveling to the U.S., particularly with the aim of visiting Fethullah Gülen, was also actively carried out by Consular officers. Compiling a list of Gülenist organizations as well as periodical meetings to discuss trends within the Gülenist applicant pool let Consular officers in Ankara and Istanbul notice "what appears to a purposeful 'shifting' of applicant profiles appearing for visa interviews in what may be an effort by Gülenists to identify 'successful' profiles." After giving the general features of applicants and visitors (the young exchange visitor; the married middle-aged male with no English and traveling alone; the middle-school-aged English student; the graduate student going for English), the Consul General Jones claims that "evasiveness of Gülenist applicants leaves Consular officers uneasy" although there seems to be "a benign humanitarian movement" on the surface. Source: <http://www.dailysabah.com/war-on-terror/2016/08/02/a-decade-of-the-gulen-movement-on-wikileaks-more-than-meets-the-eye>

BREIFING ON GULEN RELATED CHARTER SCHOOLS IN TEXAS

Current Situation

There are approximately 46 Gulen-affiliated charter schools serving 31,000 students in the state of Texas. Chairman McCaul has two schools within his district.

In May, Amsterdam & Partners filed a 32-page complaint alleging that Harmony Public Schools, the state's largest charter school network, hires under-qualified Turkish teachers and steers business to companies run by Turkish nationals, including some former Harmony employees.

Amsterdam & Partners additionally alleged that Harmony Schools are guilty of funneling money to Fethullah Gulen via tithes from teachers, that Harmony schools have misused bond money from the state of Texas to operate schools in Arkansas, and that Harmony abuses the H-1B visa program to bring in Turkish workers as teachers and then shuffle them around the United States in various positions.

The Texas Education Agency had found the allegations credible and were investigating the complaint. However, on October 17, the TEA cleared Harmony of allegations that it illegally steered business to vendors with ties to Harmony and the nation of Turkey. But, the TEA only dismissed several other claims that involved teacher hiring, special education and other matters, saying it was its jurisdiction.

In response, Amsterdam & Partners has criticized the TEA for only investigating two of the ten allegations, saying "this cursory inquiry not only ignored the majority of the issues raised in the complaint, but also failed to look beyond the registered agents of the contracting companies without even considering who the beneficiaries are." Amsterdam continued, "Knowing the Gülenists, they will undoubtedly attempt to portray this whitewash as a victory. But the fact is that there are many areas that TEA did not address, and we intend to request other state agencies and public officials to scrutinize Harmony's activity."

Inadequate Investigation

Among the issues in the complaint that were left aside by TEA include evidence of discrimination in hiring, pay, and promotion favoring Turkish males, preference for related Turkish vendors in major contracts, discrimination against English Language learners and Students with Disabilities, abuse of the H-1B visa program to bring in underqualified Turkish nationals for teaching and leadership positions, misuse of federal program funding for low socioeconomic students and students with special needs, and systematic overcharging of leases to Harmony schools by Harmony's private real estate arm to siphon over \$18 million of public funds out of the schools.

Despite finding that Harmony had paid over \$18.7 million dollars to Turkish owned vendors in the last two years, TEA conducted no analysis to determine whether these vendors had illegal relationships to Harmony's leadership, as alleged in the complaint. This deserves more investigation because it is known that some of these local funds Harmony receives come from questionable sources. For example, Harmony received \$175,000 from Gulen-affiliated schools in Oklahoma that in a recent audit by the Oklahoma State Auditor were considered an improper use of state funds.

Past Improprieties

This is not the first time that Harmony Public Schools has been accused of impropriety.

In 2011, *The New York Times* found that Harmony gives the vast majority of its construction and renovation contracts to Turkish-owned companies, even when other firms had offered to do the job for less money. *The Times* also noted that Harmony applies for hundreds of H-1B visas, claiming that there are no skilled Americans qualified to teach children. Texas has a population of almost 30,000,000 people.

In 2014, Harmony Public Schools settled a federal civil rights complaint that involved a female American teacher who made less than her male colleagues from Turkey, including those with less experience.

Also in 2014, Harmony reached an agreement with the U.S. Department of Education over how it teaches children who are learning English or have disabilities. A federal investigation found that those students were "significantly underrepresented" at Harmony, and that Harmony didn't ensure those students received the extra help they needed.



To: Flynn Intel Group
From: Sphere Consulting
Date: October 18, 2016
RE: Charter Schools and the Department of Education

The Charter Schools Program (CSP)

The Department of Education has a Charter Schools Program that disburses discretionary grants to "create new high-quality public charter schools, as well as to disseminate information about ones with a proven track record." Federal funds are also available to replicate and expand successful schools; help charter schools find suitable facilities; reward high-quality charter schools that form exemplary collaborations with the non-chartered public school sector; and invest in national activities and initiatives that support charter schools.

The CSP is part of the Department of Education's Office of Innovation and Improvement (OII). The OII has a self-state mission "to accelerate the pace at which the U.S. identifies, develops, and scales solutions to education's most important or persistent challenges," which it accomplishes through strategic investments and discretionary grant programs.

CSP Grants

The CSP disburses grants and funding in about a half dozen ways. These are listed with their FY 2016 funding levels.

1. The Secretary of Education awards grants to State Educational Agencies (SEAs) to enable them to conduct charter school programs through sub-grants at the state level.
 - a. \$177,209,326 for new awards and \$11,548,828 for continuation awards
2. The Secretary of Education awards grants for "Planning, Program Design, And Initial Implementation Grant" directly to programs that do not have a State Educational Agency or that do not have a State Educational Agency with an approved application for CSP grants.
 - a. \$3,325,107 for new awards and \$2,784,727 for continuing awards
3. The Secretary of Education awards grants for "dissemination" (including assisting the foundation of new charter schools, developing partnership, producing curriculum materials, and conducting evaluations) directly to programs that do not

have a State Educational Agency or that do not have a State Educational Agency with an approved application for CSP grants.

- a. This grant has not been awarded or continued since 2014.
4. The CSP awards grants to charter schools or non-profit charter management programs to expand enrollment of high-achieving programs by substantially increasing the number of available seats per school, or to open one or more new charter schools based on the model for which the eligible applicant has presented evidence of success.
 - a. \$65,759,488 for new awards and \$32,316,646 continuing awards
5. The CSP awards funds that are used to match programs funded with nonfederal dollars that make payments, on a per-pupil basis, to provide charter schools with facilities financing. The funds scale down annually and are phased out after 5 years.
 - a. Funding data is not available for 2016. In 2015, \$9,000,000 was disbursed as a continuation of previous grants.
6. The CSP awards grants that support efforts by eligible entities to improve the quality of charter schools by providing technical assistance and other types of support on issues of national significance and scope.
 - a. In 2015, provided \$4,123,072 in new awards.
7. The CSP provides grants to eligible entities to permit them to enhance the credit of charter schools so that the charter schools can access private-sector and other non-Federal capital in order to acquire, construct, and renovate facilities at a reasonable cost.
 - a. In 2015, provided \$14,069,608

Gulen Schools Receiving Federal Funding

School	Chartering Org.	Location	Year	Grant Details
Harmony Schools*	Cosmos Foundation	Houston, TX	2011	3 years \$4,940,897
Horizon Science Academy-Southwest	Concept Schools	Chicago, IL	2015	3 years \$337,138
Chesapeake Math & IT Academy-South	Chesapeake Lighthouse Foundation	Hanover, MD	2014	3 years \$617,120
Thomas Edison Energy Smart	Apple Educational Services	Somerset, NJ	2010	3 years \$530,507
Triad Math & Science Academy	Washington Educational Foundation	Greensboro, NC	2010	1 year \$530,432
Triad Math & Science Academy	Washington Educational Foundation	Greensboro, NC	2012	2 years \$751,145
Noble Schools*	Concept Schools	Chicago, IL	2014	3 years \$507,209

Young Scholars of Western Pennsylvania	Apple Educational Services	Pittsburgh, PA	2012	2 years \$301,500
Vision Academy	Apple Educational Services	Lansdowne, PA	2016	3 years \$783,104

*Grant was awarded to a network of schools, rather than an individual institution

<https://innovation.ed.gov/what-we-do/charter-schools/credit-enhancement-for-charter-school-facilities-program/awards/>
FIND OUT WHAT BUILDERS BUILD GULEN SCHOOLS THEN CROSS REFERENCE

<https://innovation.ed.gov/what-we-do/charter-schools/charter-school-program-state-educational-agencies-sea/awards/>
WHEN THERE IS AN APPLICATION PDF, FIGURE OUT IF THE STATE HAS DISBURSED FEDERAL FUNDS

EXHIBIT 8

mf

22
2/17

V. FARA

- Ekim / ~~pro~~ payment - consulting on refunds - according to BK - refund

- Bijan was paying them back (that is what Bijan told Flynn).

- consistent agreement w/ Ekim: don't remember.

- Don't remember side convos w/ Ekim regarding consulting specifically. Had 2 weekly update calls, meeting in NY, met a FIG's office early on.

- Bijan - GF has known him since 2007. consider him as ~~Bijan~~ family. we are good friends. I don't know him to mislead.

- Bijan ~~is~~ is charming, network, but not great business acumen.

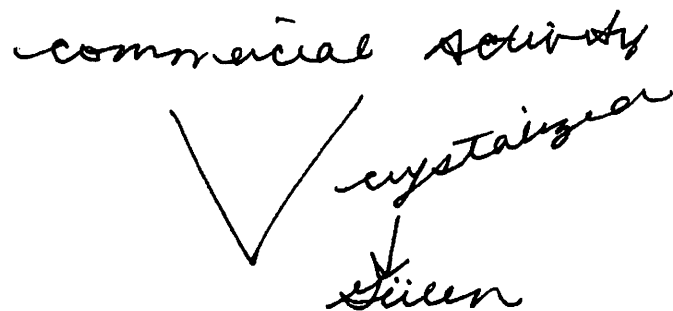
- promising to see on calendar now many days Flynn was in FIG office during FIG & w/ ~~pro~~.

- ~~had to~~ had written 3 or 4 op-eds on campaign's plan to fight ISIS / Islamism / Radicalism

↳ pull every article

- learned about eulen charter schools through book tour.
(learned more about it through Inovo representation).

- ALAC - law to use U.S. Law in American courts, not Sharia Law (learned about on book tour).



- Bijan had done a video w/ Woolsey on Azerbaijan.

- push for placement of article was for campaign reasons. (fighting until the end to show that Trump campaign was serious on fighting Islamic extremism).

↳ mayer tried to get out through campaign channels (initially had tried to push article out on Saturday before).

- didn't know that Bijan had shared draft w/ Ekin.

~~- Don't~~

- LDA: Bijan said he would contact Bob Kelly. (concern of potentially up. foreign govt.?)

- Bijan was handling all discussions w/ Ekin.

EXHIBIT 8-A

EXHIBIT 8-A

Transcription by Sidney Powell of handwritten notes of Covington attorney, possibly Alexandra Langton, on 2-22-2017 with Mike Flynn re: FARA

[Yellow highlighting denotes information omitted from her transcription almost one year later]

- Ekim/Inovo payment – consulting or refunds –accommodation to BK – refund
- Bijan was paying them back (that is what Bijan told Flynn)
- Consultant agreement w/Ekim: don't remember
- Don't remember side convos w/Ekim regarding consulting. Specifically had 2 weekly update calls, meeting in NY, met at FIG's office early on.
- Bijan – GF has known him since 2007. Consider him as family. We are good friends. I don't know him to mislead.
- Bijan is charming, network, but not great business acumen.
- Interesting to see on calendar how many days Flynn was in FIG office during FIG K w/ Inovo.
- Had written 3 or 4 op-eds on campaign's plan to fight ISIS/Islamism/radicalism.
- CB Internal note to pull every article.
- Learned about Gulen charter schools through book tour. (learned more about it through Inovo representation)
- ALAC – law to use US law in American courts—not sharia law (learned about on book tour).
- Commercial Activity



Crystallized [down to] Gulen

Bijan had done a video w/Woolsey on Azerbaijan

Push for placement of article was for campaign reasons. (fighting until the end to show that Trump campaign was serious on fighting Islamic extremism).

Maybe tried to get out through campaign channels (initially tried to push article [cut off])

Didn't know that Bijan had shared draft with Ekim

LDA: Bijan said he would contact Bob Kelly (concern potential rep. foreign government?)

Bijan was handling all discussions with Ekim

[a few more lines not relevant]

EXHIBIT 9

Memorandum

Re: 2/22/17 Flynn Interview

On February 22, 2017, Robert Kelner ("Kelner"), Steve Anthony ("Anthony"), and Alexandra Langton ("Langton"), interviewed General Michael T. Flynn ("Flynn") at 850 10th St. NW, 20001 from approximately 9:00a.m. to 4:00p.m. Brian D. Smith ("Smith") attended later in the afternoon. Lori Flynn, Flynn's wife, also attended the meeting. Langton prepared this memorandum on February 11, 2018 based on handwritten notes taken contemporaneously with the interview that took place on February 22, 2017.

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February 11, 2018
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VII. Turkey/Inovo

Brian Smith joined the interview in the afternoon to update the group on his meeting with the FARA Unit regarding Flynn Intel Group's ("FIG") draft FARA filing. Smith highlighted that Clifford Rones had asked him about the two \$40,000 payments to Inovo BV listed in the supplemental statement. Smith told the group that he merely responded that the supplemental statement reflected information in the FIG accounting records. Smith also noted that there were several other minor changes that the FARA Unit had suggested. He believed that FIG would be in a position to file in the near future.

Kelner asked Flynn what the purpose of the \$40,000 payments to Ekim were for. Flynn responded that Bijan Kian told him that the payments were refunds. Flynn further stated that he didn't remember the consulting agreement between Ekim Alptekin and FIG. He also didn't remember any side conversations with Ekim regarding the consulting contract. Flynn said that he had two "update" calls, a meeting in New York, and a meeting at FIG's office with Ekim. Flynn commented that it would be interesting to see how much he was actually in D.C. during the period of the contract. He didn't seem to think he was around much between August and November 2016. Flynn added that he had written 3-4 op-eds for the campaign and he wrote this op-ed primarily for campaign reasons. The purpose of publishing the op-ed before election day was to "fight until the end [and] to show the Trump campaign that [he] was serious on fighting Islamic extremism." Kelner asked if Flynn tried to get the article published through campaign channels. Flynn responded, "maybe." Kelner asked Flynn if he knew that Bijan had shared a draft of the op-ed with Ekim. Flynn responded that he did not and that "Bijan was handling all discussions with Ekim."

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February 11, 2018

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Kelner asked if he was concerned about possibly having to register as a foreign agent during the contract. Flynn responded that Bijan said he would connect with Bob Kelley and he thought they had figured it out.

EXHIBIT 10

RE: GEN Flynn meeting

From: "Kelner, Robert" <rkelner@cov.com>
To: K Verderame <kverderame@ponderainternational.com>
Cc: "Smith, Brian" <"/o=covington & burling/ou=cb/cn=redplents/cn=c&b.cbpow02.smithbd">
Date: Thu, 09 Feb 2017 18:19:21 -0500

sure thing

Robert Kelner

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5503 | rkelner@cov.com
www.cov.com

COVINGTON

This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: K Verderame [mailto:kverderame@ponderainternational.com]
Sent: Thursday, February 09, 2017 6:16 PM
To: Kelner, Robert
Cc: Smith, Brian
Subject: RE: GEN Flynn meeting

Ok – yes please let her know that the delay is not intentional but due to the difficulty of scheduling with your client in his new role!

Not a good sign . . .

Do you guys want to come to my office for a change – happy to host. 1747 Penn, 2nd floor

K

From: Kelner, Robert [mailto:rkelner@cov.com]
Sent: Thursday, February 09, 2017 5:28 PM
To: 'K Verderame' <kverderame@ponderainternational.com>
Cc: Smith, Brian <bdsmith@cov.com>
Subject: RE: GEN Flynn meeting

OK. It's also my wife's birthday..... But we'll figure that out. In some ways that time might be easier for me than this weekend. Does he want to meet here at Covington?

Meantime, Heather Hunt has kind of been all over us. She emailed and then left a voicemail yesterday afternoon asking for a call this weekend (because I had indicated I thought this weekend was the earliest we could meet with our client). She said she just needed to know when we will be coming in to meet her, so she can arrange her schedule. We've never seen her this engaged in any matter (ever). I'll let her know tomorrow we wouldn't be prepared to meet her until later next week sometime.

Best,
Rob

Robert Kelner

EXHIBIT 11

COVINGTON & BURLING LLP

DRAFT

May 29, 2019

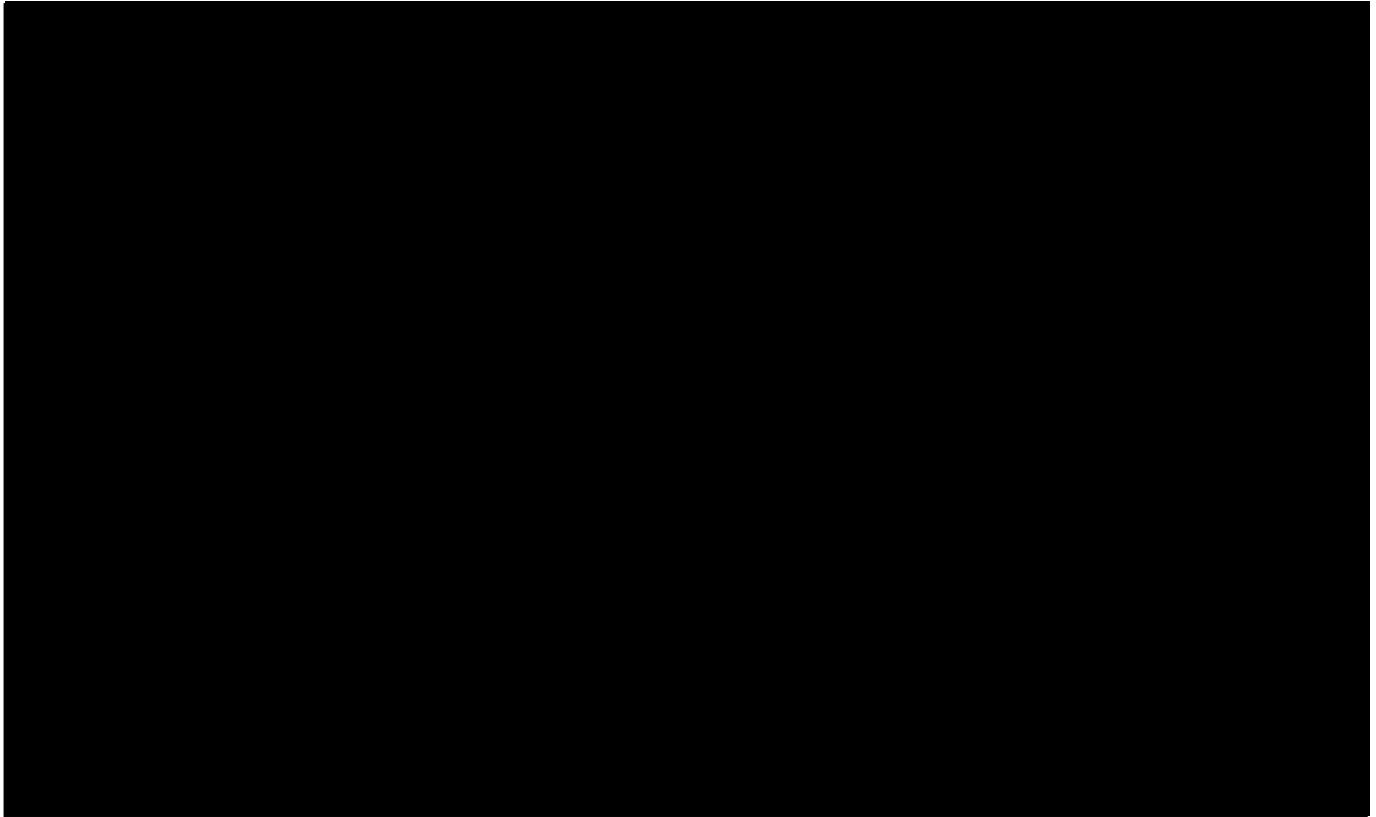
Memorandum

To: Flynn File

From: Roger Polack

Re: **May 29, 2019 Kelner EDVA Interview**

On May 29, 2019 Robert Kelner ("R") participated in an interview with prosecutors from the Eastern District of Virginia ("EDVA") at 850 10th Street, NW, Washington, DC from approximately 2:00p.m. to 4:30p.m. Bruce Baird ("BB") and Roger Polack represented Kelner during the interview. Jim Gillis ("JG") of the United States Attorney for the Eastern District of Virginia's Office ("EDVA"), Evan Turgeon ("ET") of the National Security Division of the Department of Justice ("NSD") and Bryan Alfredo of the Federal Bureau of Investigations conducted the interview. This memorandum summarizes the discussion at that meeting.



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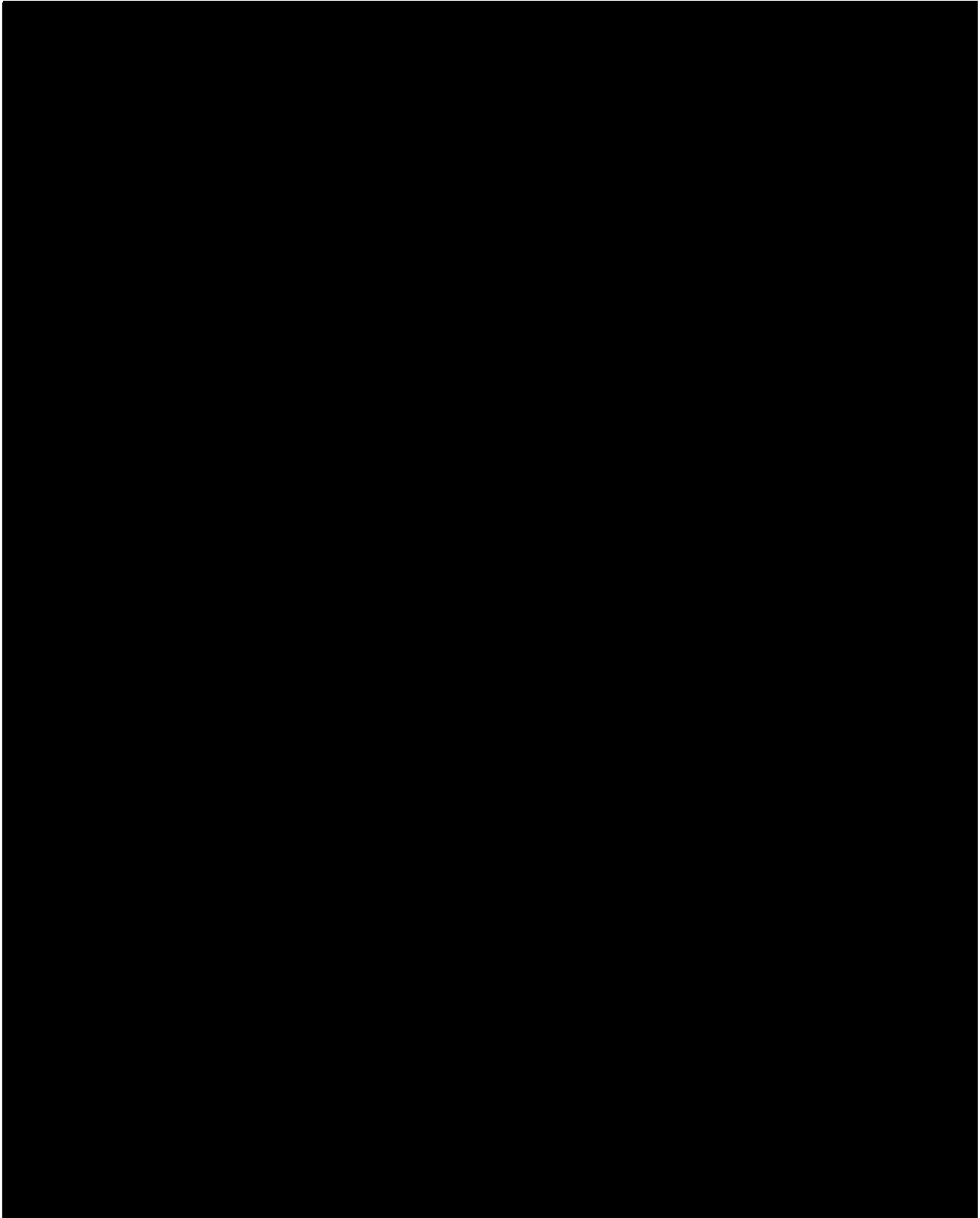
May 29, 2019

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COVINGTON & BURLING LLP

May 29, 2019

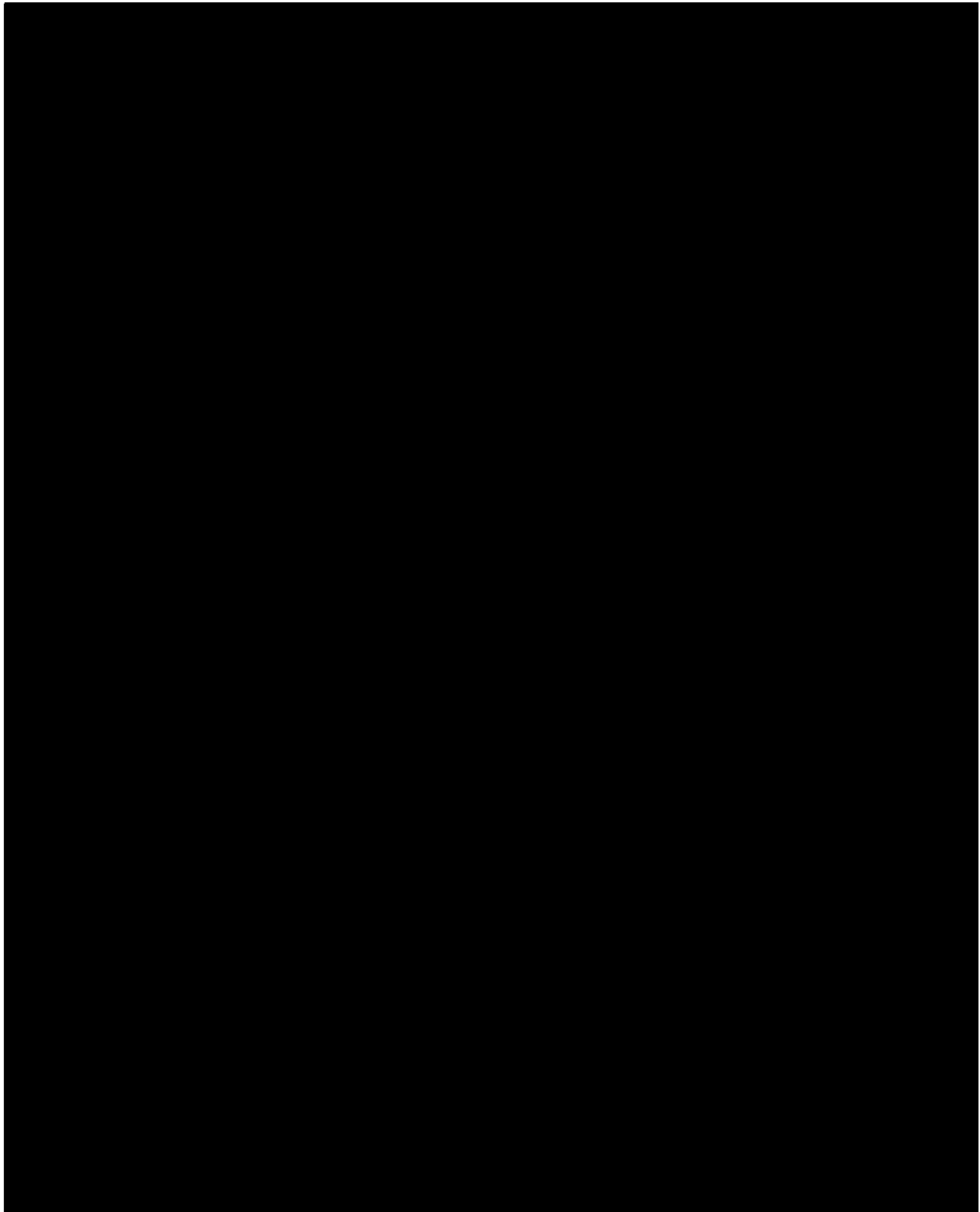
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May 29, 2019

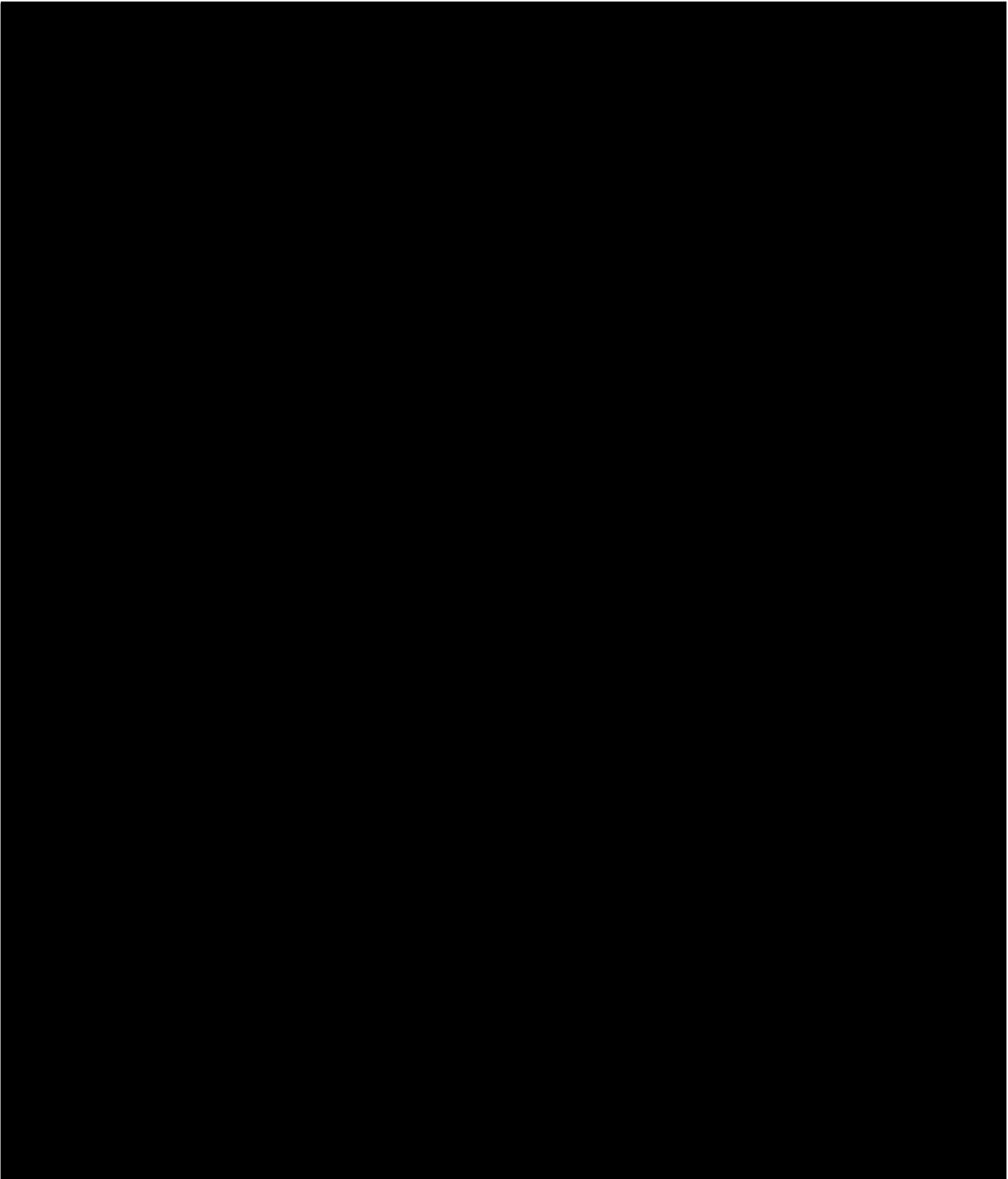
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R: Essentially everything they did related to Gulen; when speak of reasearch, op-ed, etc. related to Gulen.

ET: Did you speak to D about this document?

R: Not sure; it would have depended on when we obtained this doc. Even if had it before, did not necessarily go through every doc; were trying to capture high-level info of who client was and nature of work.

ET: Do you recall showing him some docs? R: Yes.

ET: Recall specific ones?

R: Some, but not all. Showed him early exchanges of emails in which Ekim discussed project with Turkish gov, specifically Green Light email; and emails and docs related to Sep 19 NYC meeting; remember showing emails and docs related to contracts with Inovo and with Ekim Alp.

G: These were during the formal interviews?

R: Yes. And during these we made clear we do not represent him personally.

ET: Anything else remember?

R: Let me go to one point early on. Start out by asking for internal investigation -- that's a bit of a term of art. At that point helping a client respond to an inquiry; internal investigation implies looking for wrong doing.

G: We get it; understand.

6. Exhibit 48-A

ET: Have you seen this email before?

R: Yes. This is an email from BK to Ekim Alp letting him know that the op-ed about Turkey was about to be published.

ET: Any attachments to email?

R: Appears to indicate that there was an attachment.

ET: Is this an email you remember discussing with BK?

R: I don't know; may have, but don't recall. Certainly discussed the topic, but don't recall two years later whether we discussed the specific email.

G: What was topic?

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R: Nature and origin of op-ed published in the Hill. One of my challenges is remembering which emails we had and saw when; so don't recall whether had this at the time of interview; even if did have, don't know if had shown.

G: was there something preventing you from going back to him after receiving initial emails?

R: Sort of; will discuss with Bruce.

G: Tell us later.

R: Key point is not impeded from consulting with him things we needed to consult about. Let's find out if we showed it to him this "the arrow has left the bow" email.

ET: Did you discuss... what of anything did D tell you about why he sent EA the op-ed?

R: He said, well, here is how it came up, we were questioning him about who wrote op-ed, how it was written and how it came up. He was trying to assure us that Ekim did not write it, did not have input, just had some typographical input. Then he told us that Ekim did have concerns about MB and how that might play in Turkey.

ET: So D said would send for typographical edits?

G: Tried to assure you of what?

R: That EA just sent typographical edits, and believe we confirmed that through emails. Don't recall BK explaining why he sent the op-ed to EA. This came up organically in our conversation who wrote the op-ed.

R: Suggest a question: if question is what did he say about the origins of op-ed; answer is this was MF's idea and not an idea that came from Ekim or the Turkish government at all.

G: Did he say anything about what his role was?

R: What Bijan's role was? Yes, he arranged for a copy-editor, to edit the op-ed. And it was Bijan who helped place the op-ed; which he did through Sphere, a PR firm that happened to be under contract in relation to Inovo contract; BK described this as something that Sphere was doing as a favor and not part of Inovo project. Recall BK saying this was all coming together very quickly and that's why needed Sphere's help in placing it.

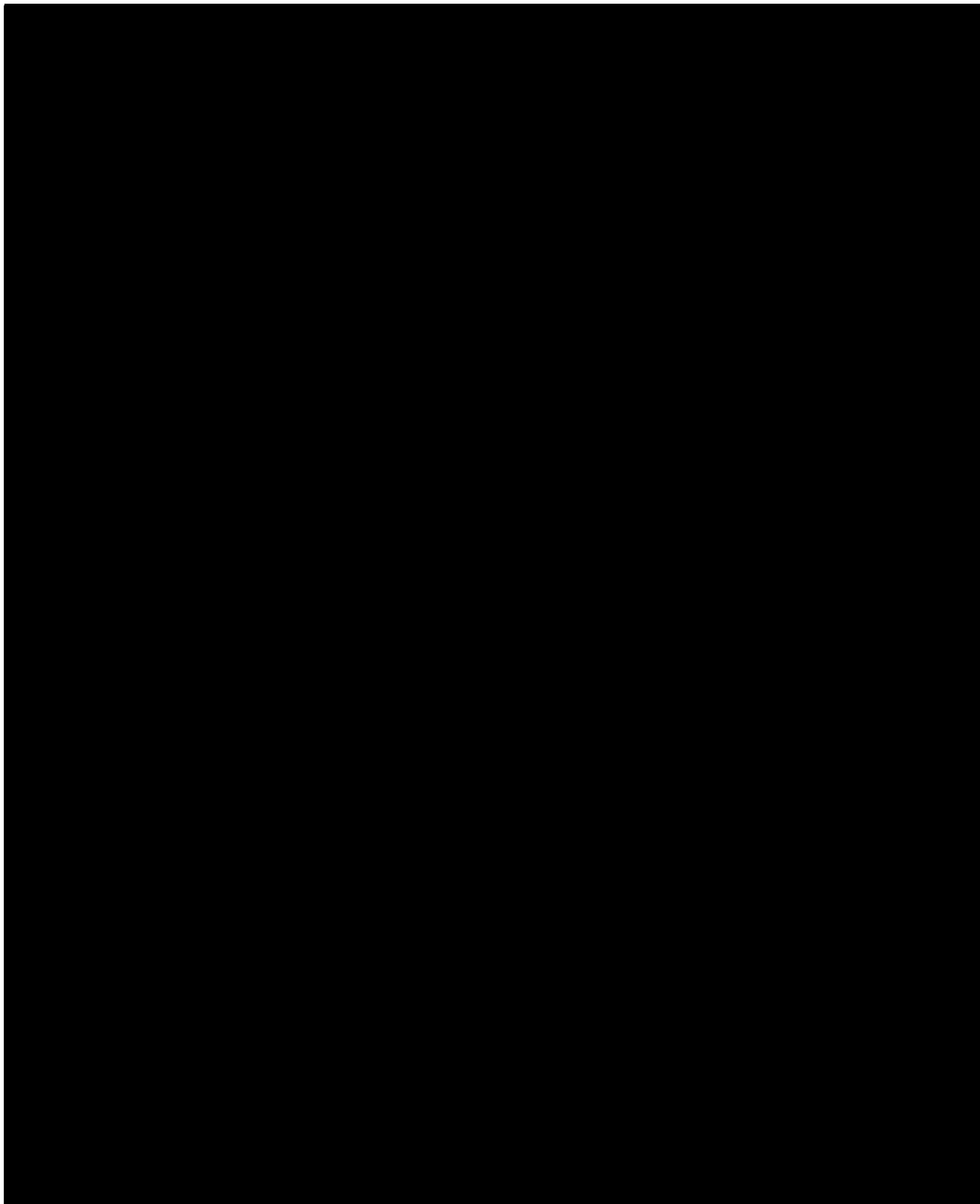
G: Did he say why it needed to be placed? Why was there a rush to get the op-ed placed?
FOLLOW UP ON THIS. Want to be certain who told you what you remember.

G: Did Bijan say anything about who did the initial draft?

R: I recall his telling us that MF wrote it, with editing assistance from Hank Cox. Think he also told us that he, BK, had some input, commenting on the draft/reacting to it.

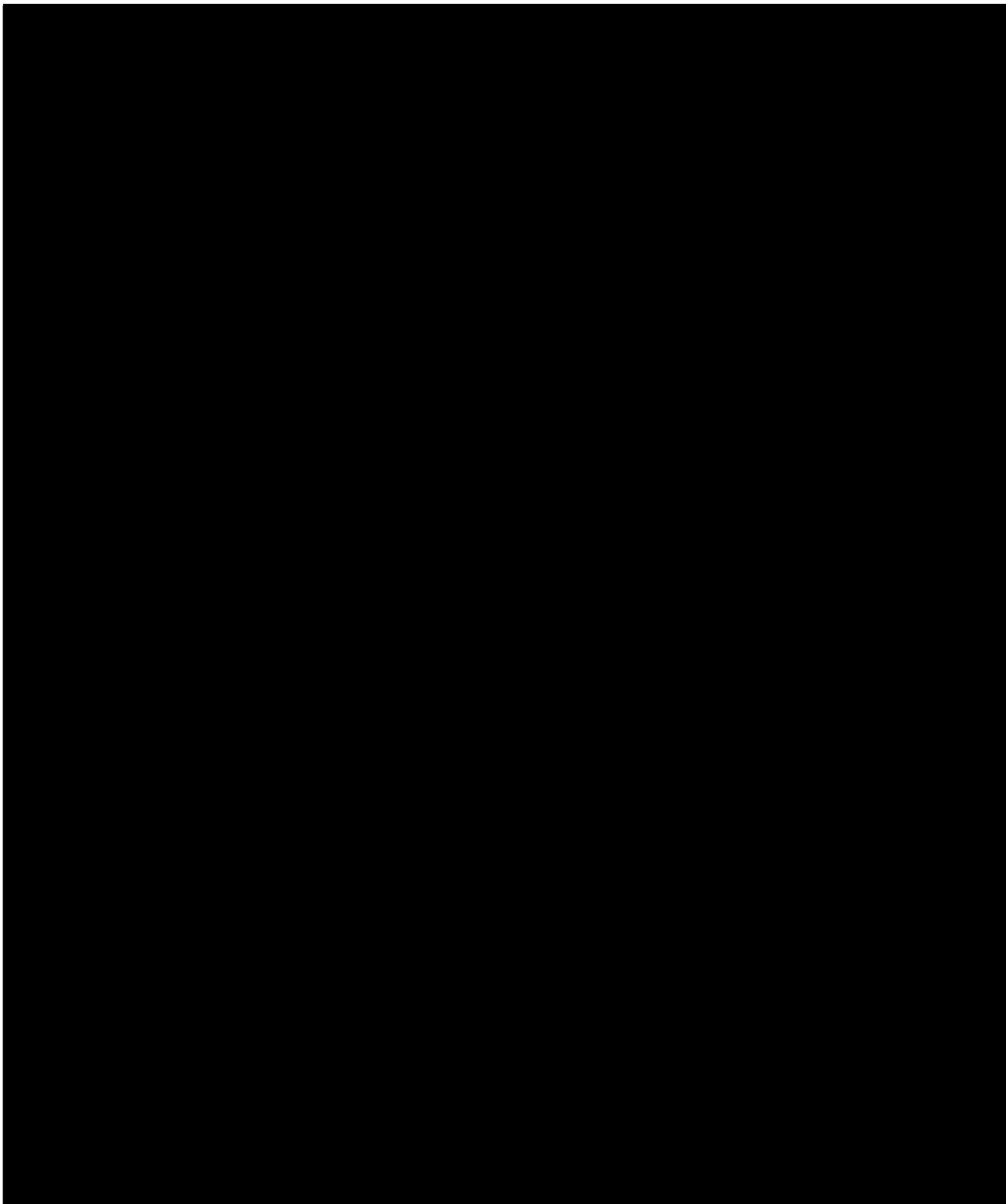
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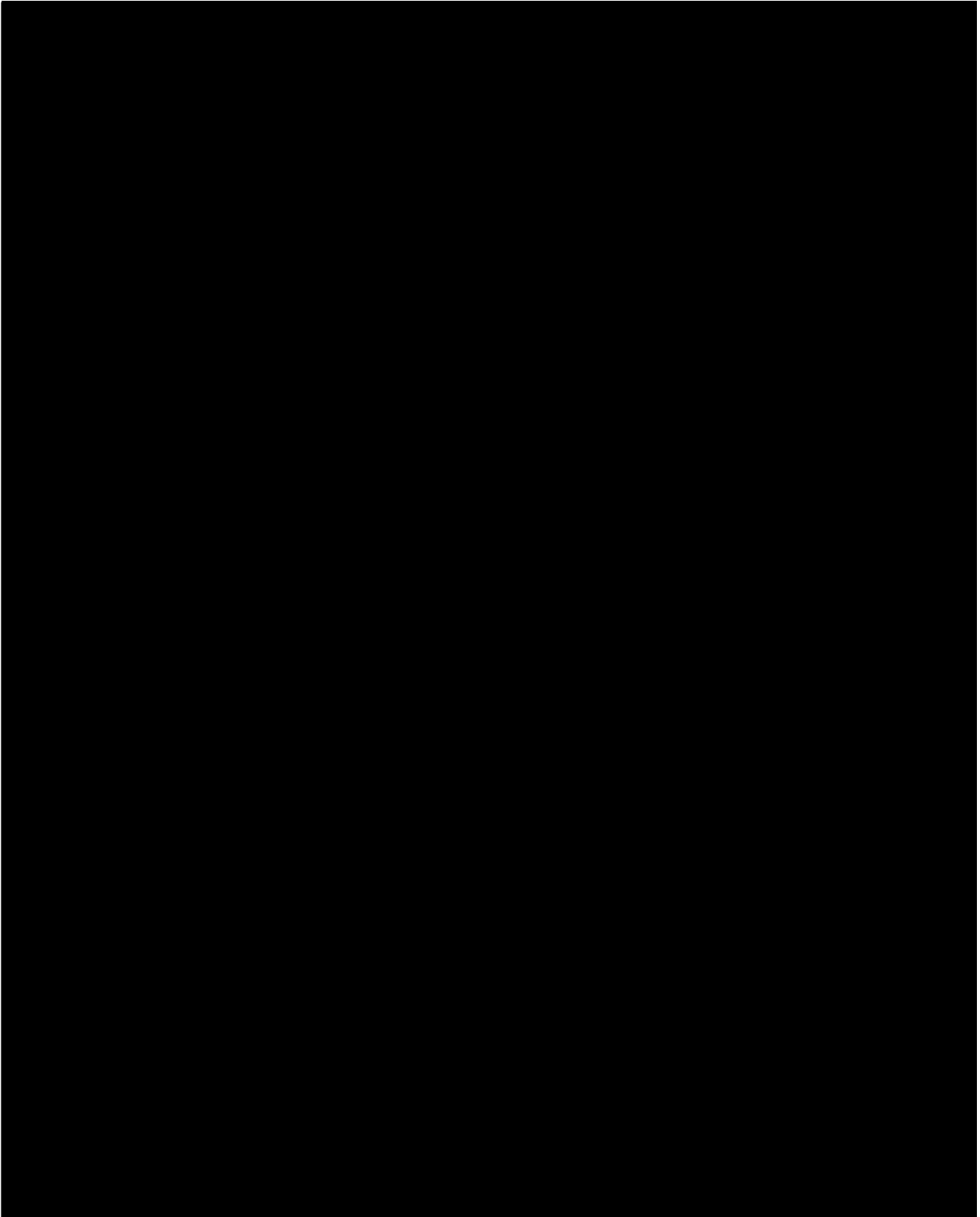
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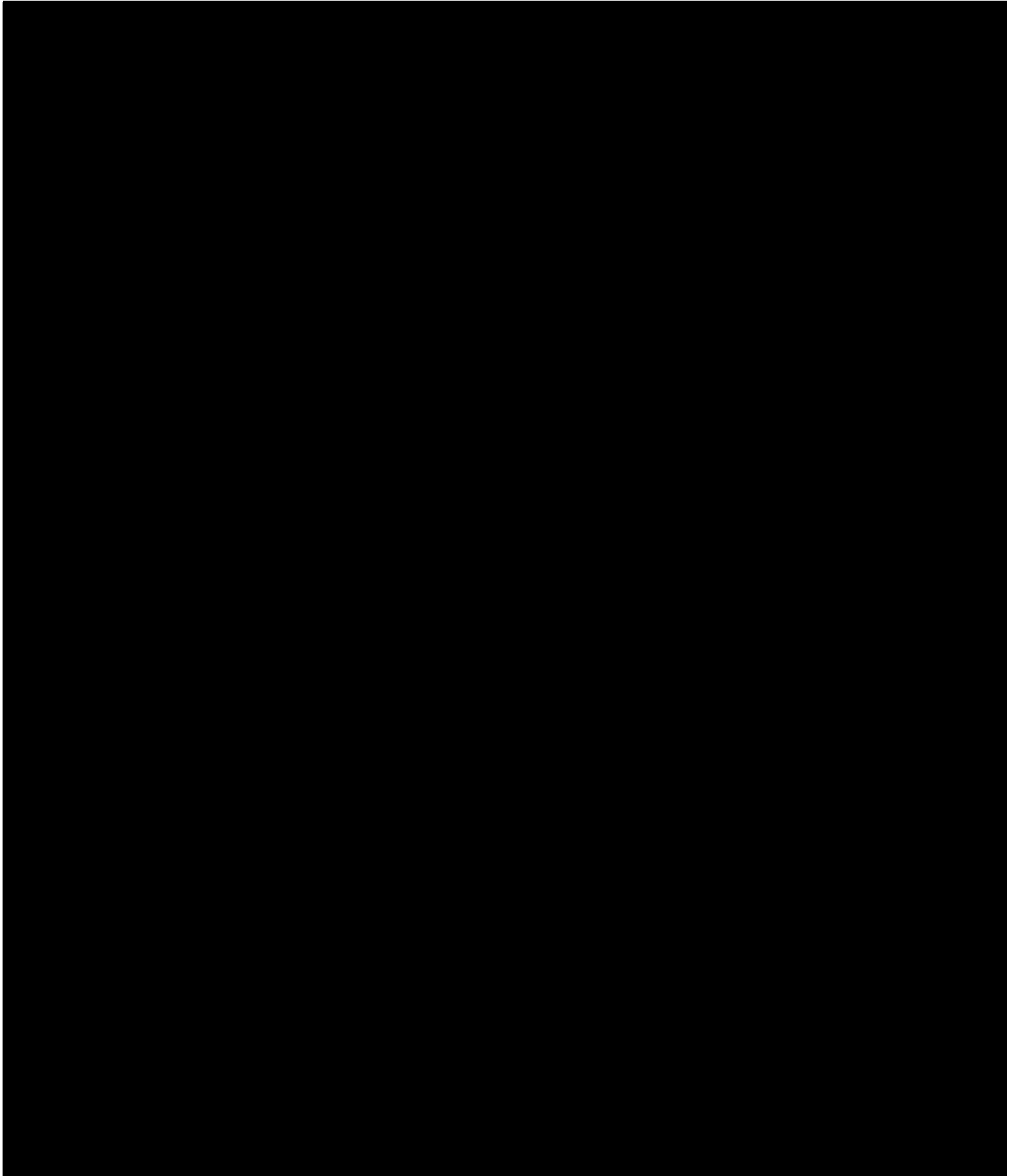
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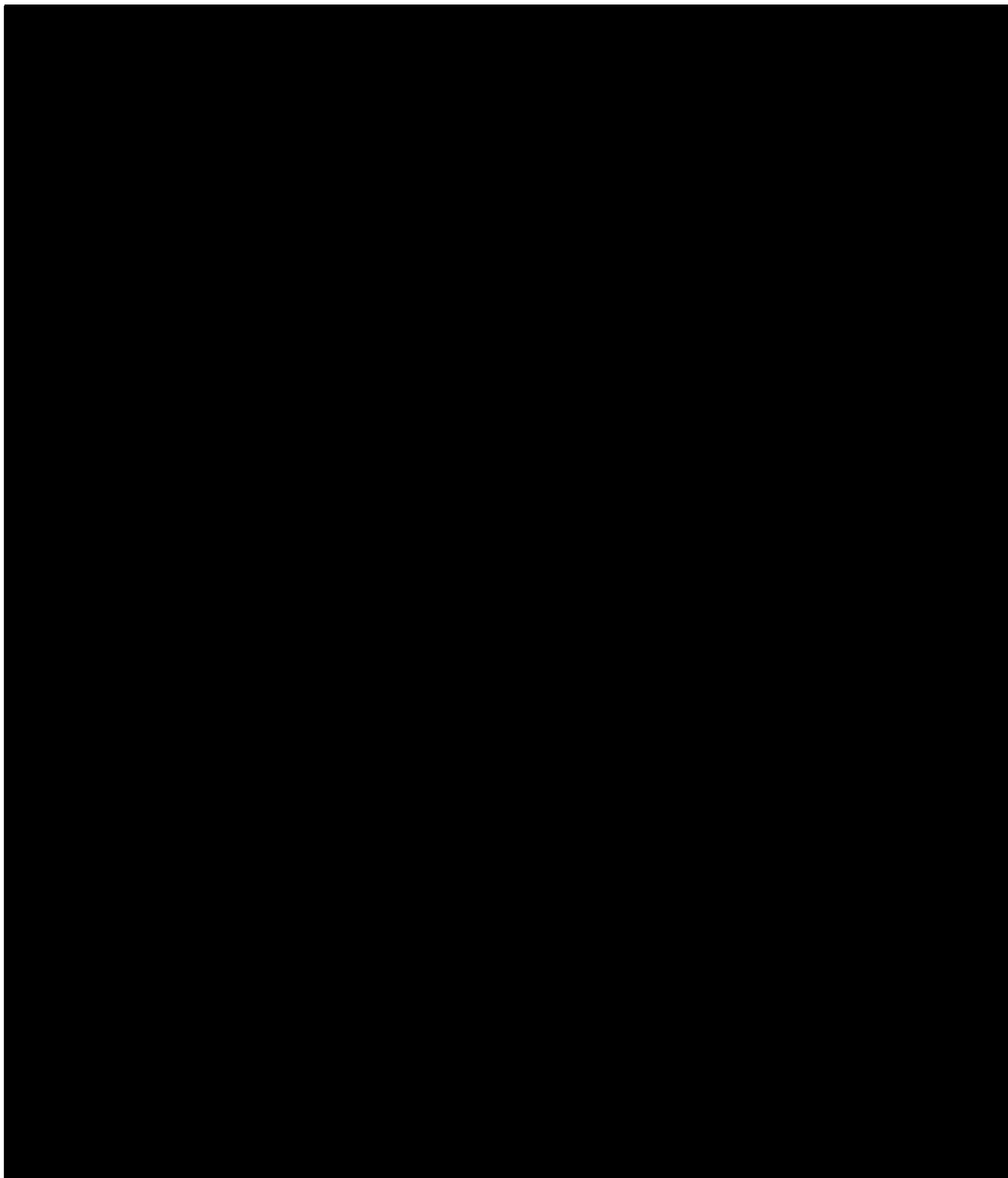
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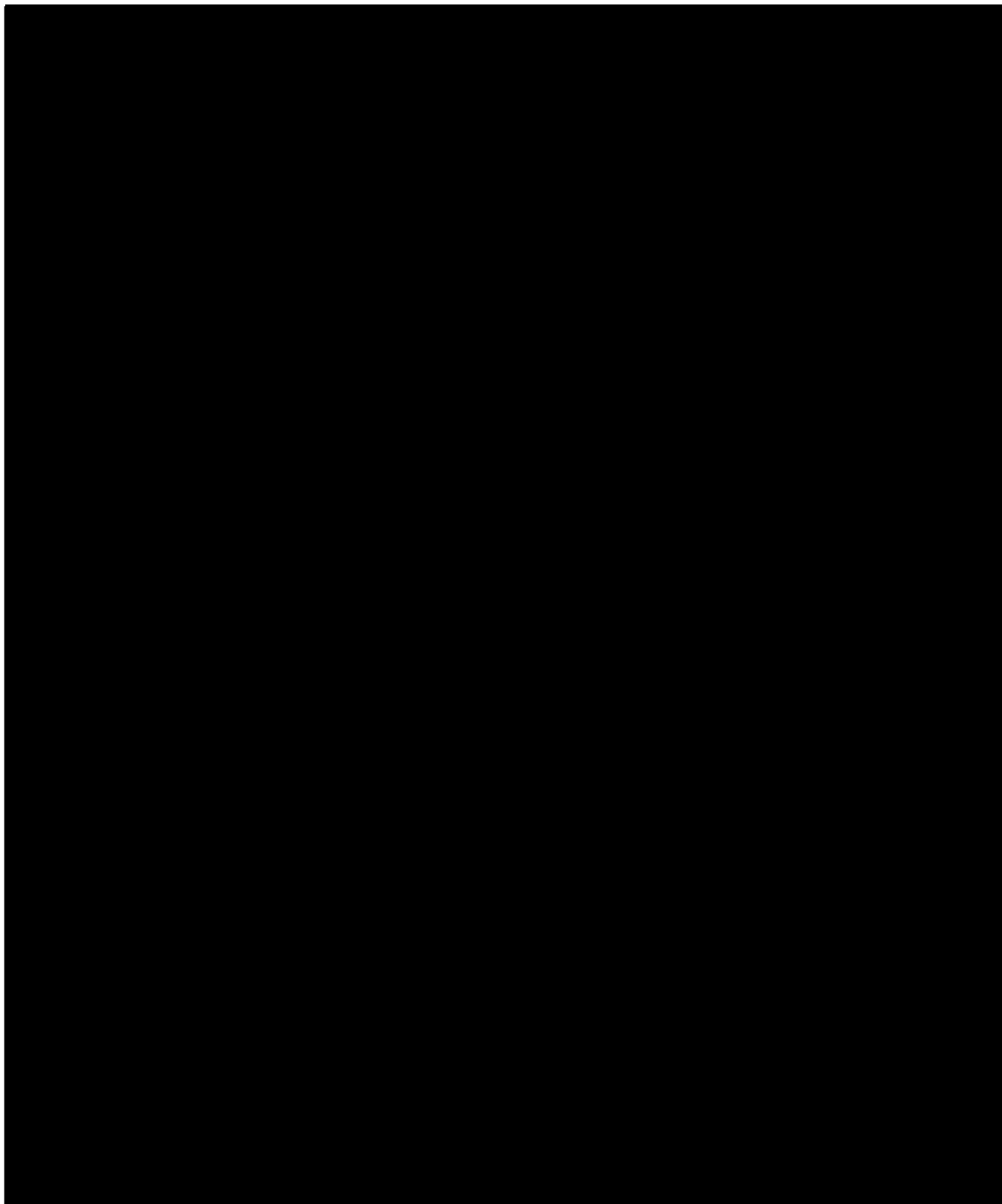
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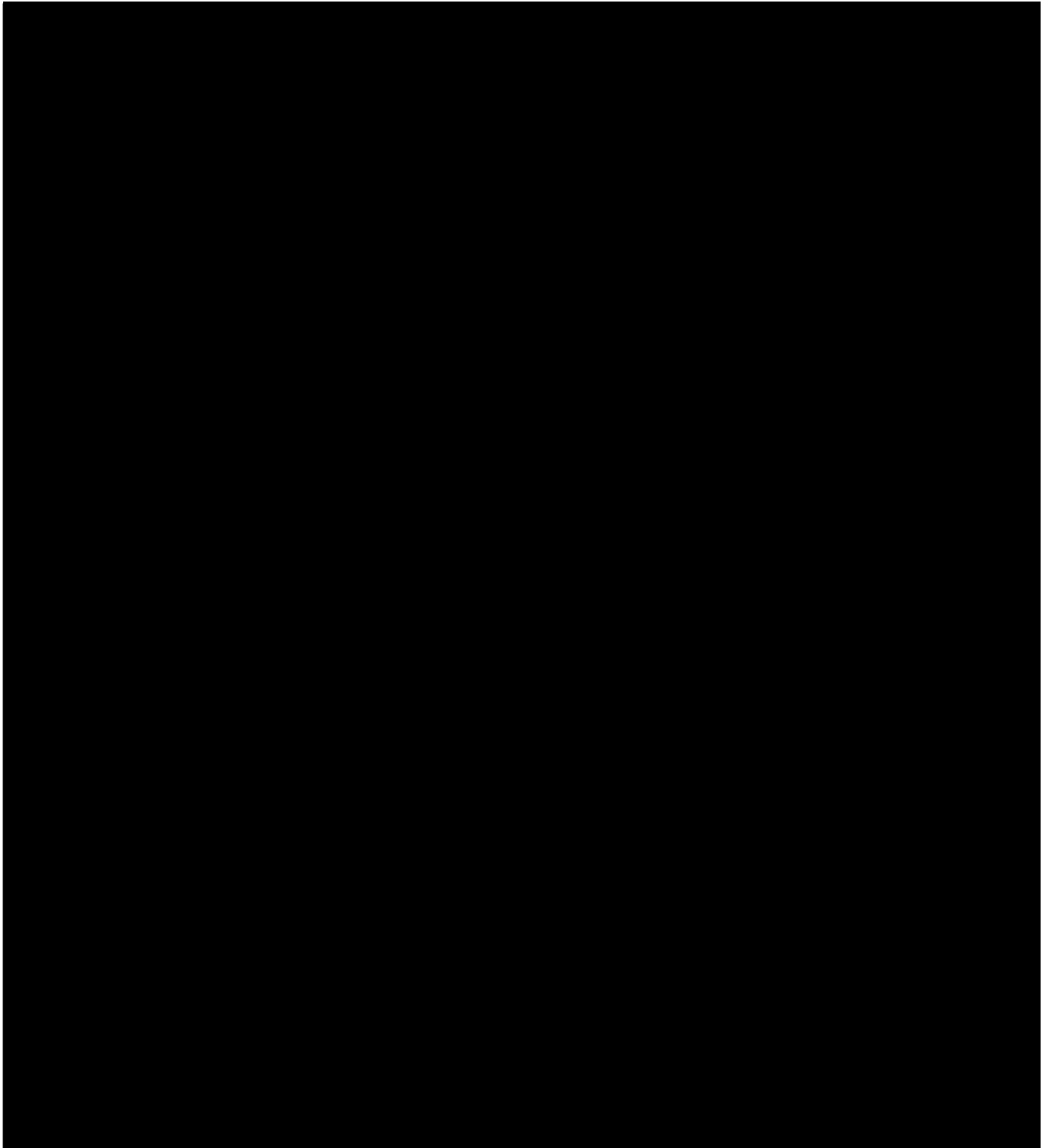
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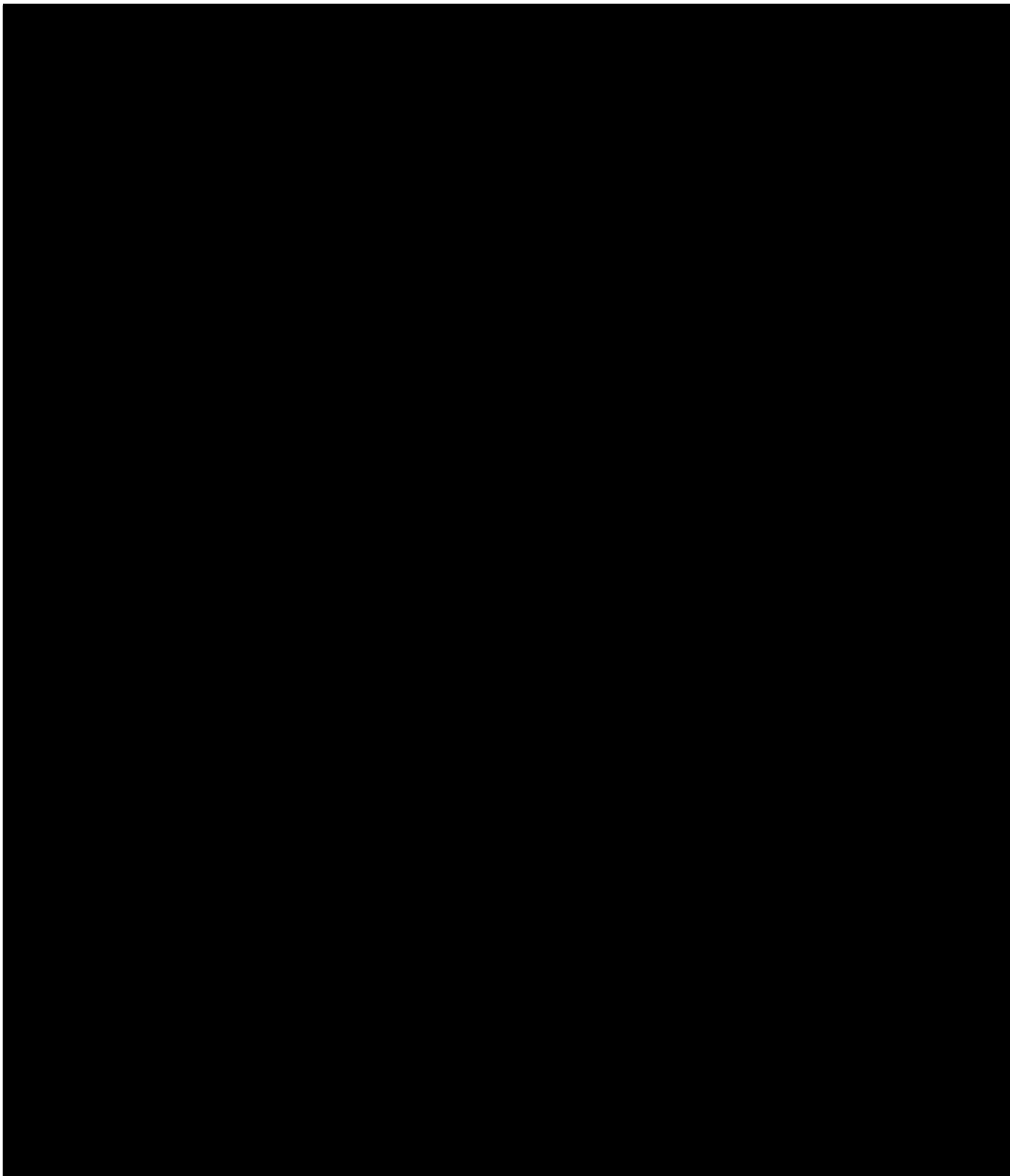
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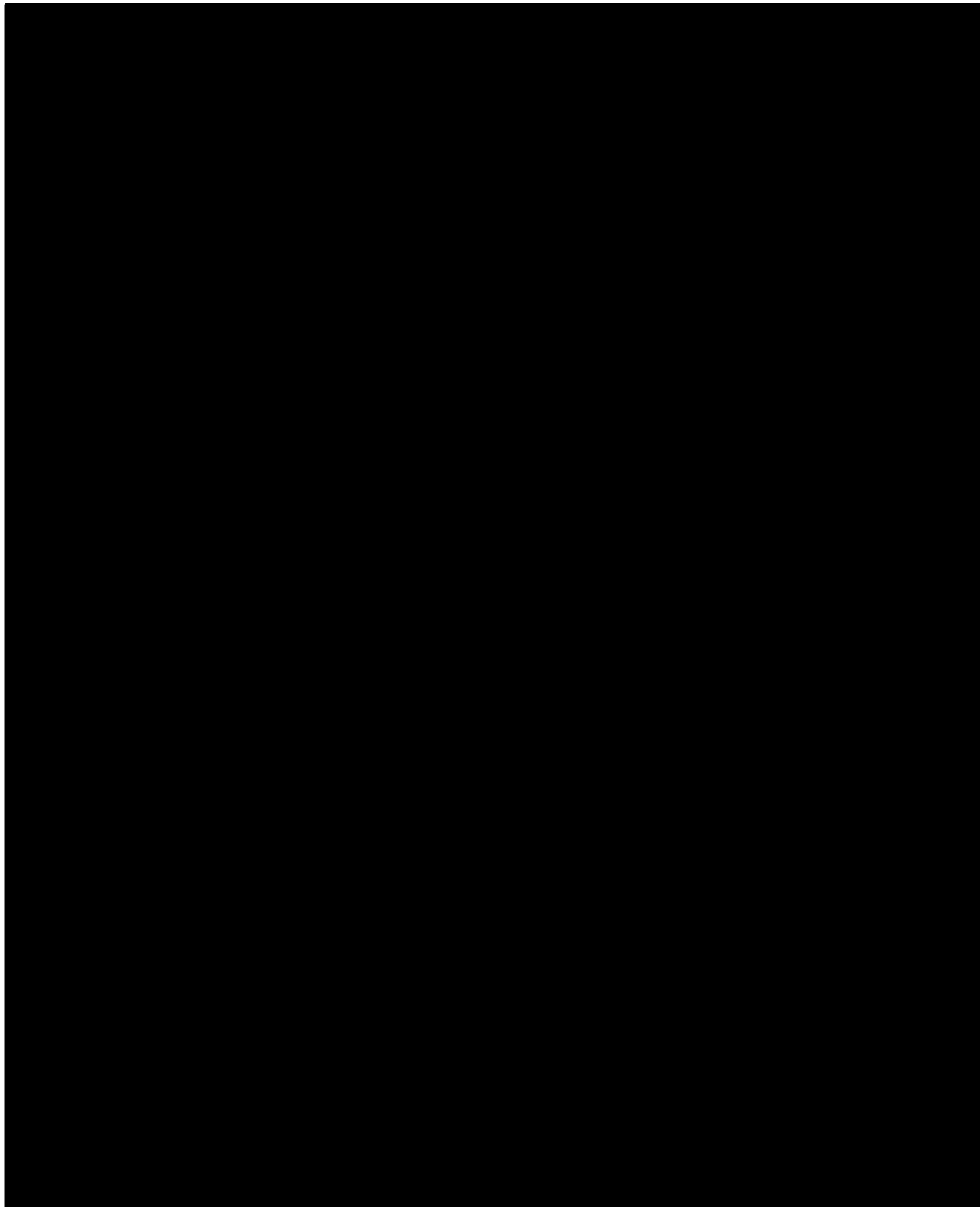
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EXHIBIT 12

Smith, Brian

From: Kelner, Robert
Sent: Saturday, January 21, 2017 2:14 PM
To: 'Kristen Verderame'; Smith, Brian
Cc: Langton, Alexandra
Subject: RE: Time sensitive- Ekim Alptekin- engagement letter

I've now had a chance to read this Arent Fox memo more carefully. First, it is so filled with garbled English that I suspect parts were written by someone other than Nolan (and then not edited by him). Second, it is flagrantly wrong on the law. It misunderstands the LDA exemption, making no mention of the regulatory requirement that the activities not principally benefit the interests of a foreign government. Third, it repeatedly states that Sphere was never retained, which is perplexing. Fourth, it frames the whole FIG engagement around Inovo's work for the Israeli oil deal, which Bijan said he knew nothing about.

When you speak with Nolan, I would ask:

little background on details / diligence

- (1) If this all had to do with an Israeli oil field, how is it that was never mentioned to Bijan or Mike Flynn? Was there a reason that wasn't shared with them?
- (2) Sphere filed an LDA report for its work for Inovo through FIG. Was he not aware of that? How can Ekim say Sphere was never retained?
- (3) Ekim had told Bijan he was discussing with members of the Turkish cabinet, including the Minister of Foreign Affairs, a proposal and budget for a project with FIG. Was Nolan aware of that? Does that change his conclusion at all that this was purely an exercise for a private Dutch based company?
- (4) Ekim arranged a meeting for FIG with the Turkish Minister of Foreign Affairs in New York, shortly after the Inovo contract was executed, and the meeting related in some way to the project Inovo was performing for Inovo. Was Nolan aware of that? Does that change his conclusion?

9/19

The point of asking these questions is to do our due diligence, and to see if it shakes loose any additional facts. As we discussed, we should assume this will not be a privileged discussion.

Rob

Robert Kelner

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5503 | rknelner@cov.com
www.cov.com

COVINGTON

This message is from a law firm and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system. Thank you for your cooperation.

From: Kristen Verderame [mailto:Kristen.Verderame@intercede.com]
Sent: Wednesday, January 18, 2017 4:22 PM

EXHIBIT 13

U.S. Department of Justice
Washington, DC 20530

OMB No. 1124-0001; Expires April 30, 2017

Registration Statement
Pursuant to the Foreign Agents Registration Act of
1938, as amended

INSTRUCTION SHEET-READ CAREFULLY

1. *Use.* All persons required to register under this Act shall use this form in submitting the information required by Section 2(a).
2. *Read Act and Rules.* Registrant should carefully read the Act and the Rules thereunder before completing this form.
3. *Answer.* Unless otherwise specifically instructed in this form, a registrant shall answer every item on this form. Whenever the item is inapplicable or the appropriate response to an item is "none", an express statement to that effect shall be made.
4. *Attachments.* Inserts and riders of less than full page size shall not be used. Whenever insufficient space is provided for response to any item, reference shall be made in such space to a full insert page or pages on which the item number and inquiry shall be restated and a complete answer given.
5. *Filing.* The completed statement, including all exhibits, shall be filed in electronic form with the Registration Unit, Counterespionage Section, National Security Division, U.S. Department of Justice at <http://www.fara.gov>. The statement must be filed in accordance with 28 U.S.C. § 1746. A copy should be retained by the registrant.
6. *Filing Fee.* The filing of this document requires the payment of a filing fee for each listed foreign principal as set forth in Rule 5(d)(1), 28 C.F.R. § 5.5(d)(1).
7. *Privacy Act Statement.* The filing of this document is required for the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: <http://www.fara.gov>. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: <http://www.fara.gov>.
8. *Public Reporting Burden.* Public reporting burden for this collection of information is estimated to average 1.375 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterespionage Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Note: Omit this instruction sheet when filing this Statement.

FORM NSD-1
Revised 03/14

MTF-EDVA00032

11/22/2016	Paul Becker	Consulting	\$6,000.00
10/03/2016	Sam Pemberton	Administrative	\$712.00
10/24/2016	Sam Pemberton	Administrative	\$ 710.00
10/11/2016	SGR LLC	Public Affairs	\$15,000.00
10/24/2016	SGR LLC	Public Affairs	\$10,000.00
11/16/2016	SGR LLC	Public Affairs	\$15,000.00
TOTAL:			\$574, 662.00

Answers to questions posed in letter dated November 30, 2016:

- 1) At any time prior or subsequent to the November 8, 2016, op-ed in The Hill, did you or anyone else at Flynn Intel Group have any communications with any official in the Turkish Government or Mr. Alptekin regarding the op-ed? If yes, please describe the nature and content of such communications.

A draft of the op-ed was shared with Mr. Alptekin in advance of publishing. Mr. Alptekin suggested changes but no such changes were accepted.

- 2) To your knowledge, at any time prior or subsequent to publication of the op-ed, did Mr. Alptekin or anyone else associated with Inovo BV have any communications with any official in the Turkish Government regarding the op-ed?

Not to our knowledge.

- 3) Other than yourself, who was involved in preparation of the op-ed?

My business partner, Bijan Kian, and his long-time editor, Hank Cox.

- 4) Did any official in the Turkish Government, or anyone acting on behalf of the Turkish Government, ask or direct that the op-ed be written, or have any involvement in the preparation of the op-ed? If yes, please explain.

No.

- 5) Did the Turkish Government, or anyone acting on its behalf, receive a copy of the op-ed (or a draft thereof) prior to its publication?

Not to our knowledge.

- 6) Did you, or any other person or entity, receive any compensation for writing the op-ed? If so, who was the source of that compensation?

No.

From: "Kelner, Robert" <rkelner@cov.com>
To: kverderame@ponderainternational.com
Cc: "Smith, Brian" <bdsmith@cov.com>, "Anthony, Stephen" <santhony@cov.com>, "Langton, Alexandra" <alangton@cov.com>
Date: Tue, 07 Mar 2017 23:04:11 -0500
Attachments: image001.png (2.66 kB)

They are working late at the FARA Unit.

Sent from my iPhone

Begin forwarded message:

From: "Hunt, Heather H. (NSD)" <Heather.Hunt@usdoj.gov>
Date: March 7, 2017 at 10:50:18 PM EST
To: "Smith, Brian" <bdsmith@cov.com>
Cc: "Kelner, Robert" <rkelner@cov.com>
Subject: RE: Flynn Intel Group, Inc.

Brian –

Thank you for your email. This is to advise you that we are in receipt of the FARA filing for Flynn Intel Group, Inc. (6:02pm on March 7, 2017). We will process the filing as quickly as possible, including your request to redact residential addresses and your request to include Rob Kelner's cover letter as part of the public file.

Please contact me if you have any questions or concerns.

Thank you,

Heather

Heather H. Hunt

Chief, FARA Registration Unit

Counterintelligence and Export Control Section

National Security Division

U.S. Department of Justice

Washington, DC 20530

(202) 233-0776/0777

heather.hunt@usdoj.gov

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	
)	
BIJAN RAFIEKIAN)	Case Number 1:18-cr-457-AJT-1& 2
)	
and)	
)	
KAMIL EKIM ALPTEKIN,)	
)	
Defendants.)	
_____)	

MEMORANDUM OPINION AND ORDER

Currently before the Court are the following Motions:

(1) Defendant Bijan Rafiekian’s Motion to Dismiss the Indictment [Doc. No. 190] (the “Motion to Dismiss”);

(2) Defendant Bijan Rafiekian’s Motion *In Limine* to Exclude Out-Of-Court Statements by Co-Conspirators [Doc. No. 154] (the “Motion to Exclude Co-Conspirator Statements”);

(3) Defendant Bijan Rafiekian’s Motion to Dismiss the Indictment and Exclude and Suppress Privileged Information [Doc. No. 163] (the “Motion to Exclude Privileged Information”);

(4) the Government’s Motions to Establish the Crime-Fraud Exception as to Defendants Rafiekian [Doc. No. 173] and Alptekin [Doc. No. 182] (collectively, the “Motions to Establish Crime-Fraud Exception”);

(5) Defendant Bijan Rafiekian’s Motion for an Evidentiary Hearing [Doc. No. 186] (the “Motion for Evidentiary Hearing”);

(6) Defendant Bijan Rafiekian's Motion *In Limine* to Preclude the Government From Arguing that Turkey Funded FIG's Work for Inovo [Doc. No. 165] (the "Motion to Preclude Argument on Turkey Funding"); and

(7) Defendant Bijan Rafiekian's Motion for Additional Peremptory Challenges and a Jury Questionnaire [Doc. Nos. 150 and 152] (the "Motion for Additional Peremptory Challenges and Jury Questionnaire").

The Court held hearings on these motions on June 13 and June 28, 2019, following which it took the Motions under advisement. For the reason stated below, the Court rules as follows with respect to the issues raised in these motions:

(1) In order to prove a violation of 18 U.S.C. § 951, an essential element of the offense is that the defendant engaged in conduct that was not an excluded legal commercial transaction. However, the Superseding Indictment sufficiently alleges in substance the essential elements and the Motion to Dismiss [Doc. No. 190] is DENIED.

(2) The United States at this point has not presented or proffered evidence sufficient to establish by a preponderance of the evidence a conspiracy for the purposes of admitting against the Defendant the hearsay statements of alleged co-conspirators pursuant to Fed. R. Evid. 801(d)(2)(E); and the Motion to Exclude Co-Conspirator Statements [Doc. No. 154] is GRANTED to that extent, without prejudice to admitting communications to Rafiekian for the limited purpose of establishing what he was told or knew about a relevant issue, or the proffer of additional evidence at trial with respect to admissibility under Fed. R. Evid. 801(b)(2)(E), and is otherwise DENIED.

(3) Pending further order by the Court, the United States may not argue or state to the jury that Turkey, in fact, funded the work by Flynn Intel Group, Inc. ("FIG") under the

contractual arrangement between FIG and Inovo, BV (“Inovo”); and the Motion to Preclude Argument on Turkey Funding is GRANTED, provided, however, the jury may be told in opening statement what the evidence will show concerning what Rafiekian was told about Turkey’s involvement.

(4) The Defendant shall have 15 peremptory challenges, and the United States 10 peremptory challenges; and the Motion for Additional Peremptory Challenges and Jury Questionnaire [Doc. Nos. 150 and 152] is GRANTED to that extent and is otherwise DENIED.

(5) With respect to the attorney-client privilege issues presented in the pending motions [Doc. Nos. 163, 173, 182, and 186]:

(a) Defendant Rafiekian’s statements to the law firm of Covington & Burling LLP (“Covington”) are not privileged to the extent made for the purposes of the public disclosures contained in the March 7, 2017 filing by Covington on behalf of FIG pursuant to the Foreign Agents Registration Act (“FARA”);

(b) Covington’s opinion work product pertaining to the FARA filing, including the information it received, its assessment of that information, the judgments it made, and what caused it to include the allegedly false statements, is not protected opinion work product. However, any other opinion work product cannot be disclosed based on the crime-fraud exception;

(c) The attorney-client privilege attaching to communications from Rafiekian personally, as opposed to communications conveyed in his capacity as a representative of FIG, has not been waived, including as to any such statements by Rafiekian to Covington in August 2016 in connection with his potential retention of Covington; and

(d) Given the Court's ruling as to the non-privileged nature of communications to Covington for the purposes of the FARA filing, and the prospect that the United States will offer into evidence only non-privileged communications to Covington, the Court defers ruling on the remaining privilege issues, which present substantial unresolved legal and factual issues, including whether there was a valid waiver of the attorney-client privilege by Michael Flynn on behalf of FIG at the government's request as part of his duty of cooperation pursuant to the resolution of criminal charges against him and after he caused FIG's dissolution based on allegedly false representations; and if that waiver was invalid, the legal consequences of that conduct.

I. BACKGROUND

A. Charges Against Rafiekian

The Superseding Indictment [Doc. No. 141], returned on May 23, 2019, contains two counts against Rafiekian. Count One charges Rafiekian under 18 U.S.C. § 371 with conspiring with Co-Defendant Kamil Ekim Alptekin¹ and others to (1) act as an agent of the Turkish government without prior notification to the Attorney General in violation of 18 U.S.C. § 951 and (2) file a materially false FARA filing in violation of 22 U.S.C. § 618(a)(2). Count Two charges Rafiekian under 18 U.S.C. § 951 with knowingly acting and causing others to act in the United States as agents of the Turkish government without prior notification to the Attorney General, as required by law. Although Rafiekian is charged with conspiring to file a materially false FARA filing, he has not been charged with an underlying FARA offense, including under

¹ The Superseding Indictment charges Alptekin with the same counts as Rafiekian, as well as four additional counts of making false statements in violation of 18 U.S.C. § 1001(a)(2). Alptekin, a dual Turkish-Dutch citizen residing in Turkey, Superseding Indictment ¶ 2, has not appeared in this case except for the limited purpose of opposing the Government's Motion to Establish the Crime-Fraud Exception as to him. *See* [Doc. Nos. 188, 216].

either 22 U.S.C. § 618(a)(1) for failing to register as a foreign agent under 22 U.S.C. § 612, or under 22 U.S.C. § 618(a)(2) for a false FARA filing.

B. The Superseding Indictment

In support of these charges, the Superseding Indictment alleges the following:²

(1) Flynn Intel Group and its Involvement in the Alleged Conspiracy

The Defendant and others participated in a conspiracy that began in July 2016 and continued through March 2017 pertaining to work relating to Turkey performed by FIG, which was co-founded and co-owned by Rafiekian (FIG's Vice-Chairman, Director, Secretary, and Treasurer) and former National Security Adviser Michael Flynn (FIG's Chairman and Chief Executive Officer). Superseding Indictment ¶ 1. To perform this work, FIG was engaged by, and signed a contract with, Inovo, a company formed by Alptekin in the Netherlands. *Id.* ¶¶ 2, 22. The engagement was formalized in a written contract between FIG and Inovo on or about September 3, 2016, though FIG had begun work on the project, which was initially known as the Truth Campaign and later became known as Operation/Project Confidence, in late July. *See id.* ¶ 22. Under the terms of the contract, the parties entered into a 90-day engagement for which FIG was to receive a total of \$600,000 broken into three \$200,000 payments from Inovo, of which Alptekin received twenty percent for his "advisory support." *Id.* ¶¶ 17–18, 22.

Pursuant to its contract with Inovo, FIG was expected to "deliver findings and results including but not limited to making criminal referrals" related to Fethullah Gulen, a Turkish imam, writer, and political figure residing in the United States. *Id.* ¶¶ 3–4, 22. Specifically, the project was supposed to result in "[a] 60 minutes video productions documenting the

² The allegations in the Superseding Indictment, which are taken as true at this stage of the proceedings for the purposes of the Motion to Dismiss, are supplemented in this section by other facts in the record, particularly from the pending motions and the exhibits thereto.

investigations” into Gulen. GEX 23B. The purpose of this work was to “discredit and delegitimize [Gulen] in the eyes of politicians and the public, and ultimately to secure [his] extradition.” Superseding Indictment ¶ 3. This goal is in line with the interests of the Turkish government, which has “accused [Gulen] of plotting to overthrow the Turkish government,” of “being behind” certain politically motivated investigations in Turkey, and of “leading an armed terrorist group,” and has formally and openly sought his extradition from the United States government, particularly after a failed July 2016 coup d’état attempt in Turkey, which the Turkish government maintained he had orchestrated. *Id.* ¶¶ 5–7.

Though FIG’s contract for this work was with Inovo, which also paid its fees, the Turkish government directed FIG’s work through Alptekin and approved the budget for, and received regular updates on, the progress of FIG’s work. *Id.* ¶ 3. In that regard, several emails between Rafiekian, Alptekin, and Flynn prior to FIG’s official engagement indicate that FIG and Inovo only entered into a formal engagement after receiving the approval of high-level Turkish government officials. *See id.* ¶¶ 8–9, 14–16. After FIG had been engaged by Inovo, Rafiekian, Alptekin, Flynn, and other members of the project met with high-level Turkish officials on September 19, 2016, where they discussed the Turkish government’s efforts to convince the U.S. government to extradite Gulen to Turkey. *Id.* ¶ 28. Alptekin had weekly telephone calls with Rafiekian, Flynn, and other FIG team members as to FIG’s progress on the project, which he then passed on to Turkish officials, and then relayed their feedback on the project to Rafiekian and Flynn. *Id.* ¶¶ 39–40.

As part of the project, FIG provided consulting and lobbying services to the Turkish government, *id.* ¶ 1, which were designed to “influence U.S. politicians and public opinion,” *id.* ¶ 3. Specifically, Rafiekian and others involved in the project “visited with and lobbied a

member of Congress, a Congressional staffer, and a state government official in an attempt to depict [Gulen] as a threat who should be returned to Turkey and to persuade them to hold Congressional hearings regarding [Gulen].” *Id.* ¶ 30. Rafiekian, working with Alptekin and Flynn, also helped draft an op-ed concerning Gulen entitled *Our Ally Turkey Is In Crisis and Needs Our Support*, and then helped place it for publication in *The Hill* newspaper, where it was published on November 8, 2016 under Flynn’s name. *Id.* ¶¶ 45–50. Rafiekian sent Alptekin his initial draft of the op-ed immediately after Alptekin complained to him that FIG had not publicized enough negative information about Gulen and asked that they find a “smoking gun.” *Id.* ¶ 44.

(2) The FARA Filing

In August 2016, Rafiekian contacted, but did not retain, Covington “to provide advice concerning FARA,” *see* Ex. G to Mot. to Exclude Privileged Information, and in September 2016, Rafiekian consulted with Robert Kelley, an attorney who later became FIG’s General Counsel, about whether FIG was required to register under FARA, *see* Ex. B to Opp’n to Mots. to Establish Crime-Fraud Exception. Based on Kelley’s advice, FIG registered under the Lobbying Disclosure Act (“LDA”) at that time. *See id.*

On November 8, 2016, the same day as the publication of the op-ed, Donald Trump won the Presidential election, leading to Flynn’s appointment as National Security Advisor designate for the incoming administration, and FIG discontinued its operations soon after. [Doc. No. 164] at 9; *see also* Ex. A to Reply in Support of Mot. to Exclude Privileged Information. Nevertheless, the publication of the op-ed triggered a letter dated November 30, 2016 to Flynn and FIG from the FARA Registration Unit of the U.S. Department of Justice (the “FARA Unit”) regarding whether FIG, Flynn, or any other individuals had an obligation to register as an agent of a

foreign government under FARA. Superseding Indictment ¶ 51; *see also* Ex. A to Reply in Support of Mot. to Exclude Privileged Information. In response to the FARA Unit's inquiry, FIG, through Flynn, hired Covington to assist with evaluating whether a FARA filing was required, and Flynn also retained Covington personally. Superseding Indictment ¶ 52; *see also* Ex. 1 to Opp'n to Mot. to Exclude Privileged Information. Concurrently, both FIG as a corporate entity and Flynn personally were also represented by Kristen Verderame. *See* [Doc. No. 196] at 3.

By letter dated January 11, 2017, Covington provided a written response to the FARA Unit's November 30, 2016 inquiry. *See* Ex. A to Reply in Support of Mot. to Exclude Privileged Information. In that letter, Covington advised that "the existence of [the FARA Unit's] letter was not known to General Flynn and FIG until approximately December 24, 2016, because FIG generally suspended its activities in mid-November, including the use of the office to which the letter was sent." *Id.* Covington further advised:

[B]ased on currently available information, we anticipate that General Flynn and FIG likely will file a FARA registration statement and supplemental statement for FIG's representation of Inovo BV, in lieu of the Lobbying Disclosure Act ("LDA") filing that FIG filed on September 30, 2016. Although the LDA filing disclosed FIG's engagement by Inovo BV, in hindsight it seems likely that the subject matter of FIG's representation of Inovo BV may have called for registration under FARA rather than under the LDA . . . [W]e have not yet reached a final determination as to the foreign principal(s) to be listed in a FARA registration. We are also continuing to assess the role of various consultants and employees who performed work for Inovo BV in order to determine whether any of them are required to file short-form FARA registrations.

Id. With respect to the op-ed authored by Flynn and published in *The Hill* newspaper on November 8, 2016, Covington advised:

It is our current understanding that the op-ed was initiated by General Flynn himself, and that he intended the op-ed to summarize a number of his long-standing public statements and positions regarding issues relating to Turkey, Syria, and the Islamic State in Iraq and Syria. We also believe that the op-ed may

have been prepared in the context of FIG's representation of Inovo BV, as the draft op-ed was shared with a representative of Inovo BV prior to publication and the op-ed related to subject matters overlapping with FIG's representation of Inovo BV.

Id.

Based on the information that it obtained during its investigation, including from Flynn, Rafiekian, Alptekin, and others, Covington filed a retroactive FARA registration on FIG's behalf on March 7, 2017 (the "FARA filing"). Superseding Indictment ¶ 55. In its cover letter to the FARA Unit with respect to that filing, Covington stated that it was filing under FARA because FIG's work for Inovo "could be construed to have principally benefitted the Republic of Turkey." Ex. D to Mot. to Exclude Privileged Information.

The Superseding Indictment alleges that the FARA filing contains materially false information and that between January and March 2017, Rafiekian and Alptekin "knowingly provided false information to [Covington attorneys] in an effort to hide from the attorneys – and ultimately from the FARA Unit – the involvement of Turkish government officials in the project." Superseding Indictment ¶ 52. Specifically, the Superseding Indictment alleges that Rafiekian made the following false representations to Covington:

- a. The meeting with Turkish officials on or about September 19, 2016 in New York City had nothing to do with Project Confidence, and instead was in furtherance of an abandoned "Project Truth" that was distinct from Project Confidence;
- b. There were no other contacts with Turkish government officials regarding the project;
- c. The op-ed was [Flynn's] own idea, and he wrote it on his own behalf, and unrelated to the project;
- d. [Alptekin] did not want the op-ed to be published; and
- e. Payments from [FIG] to [Inovo] were refunds for lobbying and public relations work that [FIG] did not perform.

Id. ¶ 53.

The Superseding Indictment further alleges that based on the misrepresentations of Rafiekian, Alptekin, and others to Covington, the FARA filing contained the following false statements or omissions:

- Paragraph 7: “List every foreign principal for whom the registrant is acting or has agreed to act.”

Response: “[Inovo]” *Id.* ¶ 56.

- Paragraph 8: “[W]ill you engage or are you engaging now in activity on your own behalf which benefits any . . . of your foreign principals?”

Response: “[D]uring the course of the engagement and thereafter, [FIG] officials (particularly [Flynn], in his capacity as a public figure separate from [FIG]) frequently wrote, spoke, or provided interviews relating to national security. Although not undertaken at the direction of any foreign principal, including but not limited to [Inovo], it is possible that such activities may have had an indirect benefit to [Inovo].” *Id.* ¶ 57.

- Exhibit A to FIG’s FARA Registration Statement falsely stated that “[FIG] does not know whether or the extent to which the Republic of Turkey was involved with its retention by [Inovo] for the three-month project.” *Id.* ¶ 58.
- Paragraph 8(b) of Exhibit A to FIG’s FARA Registration Statement falsely stated that the named foreign principal, Inovo, was not supervised or directed by a foreign government or other foreign principal. *Id.* ¶¶ 59–60.
- Paragraph 13 of FIG’s FARA Supplemental Statement: “In addition to the above described activities, if any, have you engaged in activity on your own behalf which benefits your foreign principal?”

Response: “Because of its expertise, [FIG] officials write, speak, and give interviews relating to national security. Although not undertaken at the direction or control of a foreign principal, it is possible that such activities may have an indirect benefit to a principal. On his own initiative, [Flynn] published an op-ed in The Hill on November 8, 2016, that related to the same subject matters as [FIG’s] work for [Inovo]. Neither [Inovo], nor any other person requested or directed publication of the op-ed.” *Id.* ¶ 61

- The Attachment to FIG’s FARA Supplemental Statement falsely stated that “[FIG] understood the engagement to be focused on improving U.S. business organizations’ confidence regarding doing business in Turkey, particularly with respect to the stability of Turkey and its suitability as a venue for investment and commercial activity.” *Id.* ¶ 62.
- The Attachment to FIG’s FARA Supplemental Statement also falsely stated that the September 19, 2016 meeting in New York with Turkish government officials was “for the purpose of understanding better the political climate in Turkey at the time, as background for the project.” *Id.* ¶ 63.

Although it appears that Flynn and not Rafiekian signed the FARA filing, *see* Ex. D to Mot. to Exclude Privileged Information at 8, 11, 15, the government alleges that Rafiekian reviewed the FARA filing and provided comments to Covington before it was submitted, but did not request that any of the alleged false statements therein, which he and Alptekin “caused to be made” based on their false representations, be changed, leading to the filing of a materially false FARA registration statement on FIG’s behalf, Superseding Indictment ¶ 55.³

C. Flynn’s Guilty Plea and Cooperation with the Government

³ The government does not allege that Covington or Verderame acted improperly with regard to the FARA filing, or that they were aware of any false statements or omissions therein.

On December 1, 2017, Flynn, represented in his individual capacity by Covington, which also continued to represent FIG, pled guilty to lying to the FBI about his contacts with Russian officials. *See* Ex. E to Mot. to Exclude Privileged Information. Though Flynn pled guilty to charges completely unrelated to FIG, the FARA filing, and Rafiekian, Flynn admitted in the Statement of Offense he executed in connection with that resolution that he had made the following materially false statements and omissions in the FARA filing:

5. On March 7, 2017 FLYNN filed multiple documents with the Department of Justice pursuant to the Foreign Agents Registration Act (“FARA”) pertaining to a project performed by him and his company, the Flynn Intel Group, Inc. (“FIG”), for the principal benefit of the Republic of Turkey (“Turkey project”). In the FARA filings, Flynn made materially false statements and omissions, including by falsely stating that (a) FIG did not know whether or the extent to which the Republic of Turkey was involved in the Turkey project, (b) the Turkey project was focused on improving U.S. business organizations’ confidence regarding doing business in Turkey, and (c) an op-ed by Flynn published in *The Hill* on November 8, 2016 was written at his own initiative; and by omitting that officials from the Republic of Turkey provided supervision and direction over the Turkey project.

Ex. C to Mot. to Exclude Privileged Information.

In connection with his guilty plea, Flynn also entered into a cooperation and plea agreement that mandates his cooperation with the government in its ongoing investigations and prosecutions, including in this prosecution. *See* Ex. E to Mot. to Exclude Privileged Information. Among his duties of cooperation is his obligation to “turn over to [law enforcement] . . . any and all evidence of crimes about which [he] is aware.” *Id.* at 5. Flynn’s former Covington lawyers⁴ have represented to the Court that “[Flynn] cooperated extensively with the Special Counsel’s Office, and, pursuant to his plea agreement, he continues to cooperate with the U.S. Attorney’s Office in connection with this criminal case.” [Doc. No. 76] at 2.⁵

⁴ Flynn is no longer represented by Covington and has obtained new counsel in this matter. *See* [Doc. Nos. 210–11].

⁵ Pursuant to his cooperation and plea agreement, Flynn was initially expected to testify at trial as a government witness in this case. *See* Tr. of June 13, 2019 Mot. Hrg., 65:18-19. However, the government has since notified the

As part of his cooperation, Flynn, in his capacity as CEO and Chairman of FIG's Board of Directors, (1) authorized Covington to share with the U.S. Attorney's Office certain information concerning the preparation of the FARA filing; (2) authorized FIG's former in-house General Counsel to be interviewed regarding the legal advice he provided to FIG before Covington's retention regarding FIG's obligation to file under FARA; (3) submitted to interviews by the U.S. Attorney's Office about the FARA submission and the factual information he and others shared or did not share with Covington lawyers who were working on preparing the FARA filing; and (4) authorized Covington to disclose to the U.S. Attorney's Office the factual representations made to them by FIG personnel in connection with the FARA filing; the source of those factual representations; information concerning who reviewed drafts of the FARA filing and their comments, corrections, or questions thereto; and how they received communications from FIG personnel concerning the contents of the FARA filing. *See* Ex. G to Mot. to Exclude Privileged Information.

Rafiekian was indicted on December 12, 2018, [Doc. No. 1], with a Superseding Indictment issued on May 23, 2019, [Doc. No. 141].

II. ANALYSIS

A. Motion to Dismiss the Superseding Indictment

Count One of the Superseding Indictment alleges a conspiracy to violate 18 U.S.C. § 951 and also to cause the filing of a false FARA statement in violation of 22 U.S.C § 618(a)(2). Count Two charges that Rafiekian, in violation of 18 U.S.C. § 951, knowingly acted and caused others to act as agents of the Turkish government without prior notification to the Attorney

Court that it does not plan to call Flynn as a witness in its case-in-chief. [Doc. No. 261]. Flynn maintains that he "is still willing to cooperate with the government," and that he in fact continues to do so in connection with this case. [Doc. No. 270] at 2.

General. Rafiekian first moves to dismiss Count Two on the grounds that the indictment fails to allege conduct constituting an essential element of Section 951, namely, that Rafiekian engaged in conduct that did not constitute an exempted “legal commercial transaction.” He also seeks the dismissal of Count One on the grounds that because the Superseding Indictment fails to adequately charge an offense under Section 951, the conspiracy to violate Section 951 also fails; and the conspiracy to violate Section 618(a)(2) fails to adequately allege an agreement to cause the filing of a false FARA statement.

An indictment must be “a plain, concise and definite written statement of the essential facts constituting the offense charged.” Fed. R. Crim. P. 7(c)(1). “[It] must contain the elements of the offense charged, fairly inform a defendant of the charge, and enable the defendant to plead double jeopardy as a defense in a future prosecution for the same offense.” *United States v. Daniels*, 973 F.2d 272, 274 (4th Cir. 1992) (citing *Russell v. United States*, 369 U.S. 749, 763–64 (1962)). A criminal defendant “may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits,” including “a defect in the indictment” such as a “failure to state an offense.” Fed. R. Crim. P. 12(b)(1), (3)(B). Pretrial challenges to the sufficiency of the indictment subject the alleged deficiency to a higher standard of review than post-verdict challenges to the sufficiency of the indictment. *See United States v. Kingrea*, 573 F.3d 186, 191 (4th Cir. 2009); *United States v. Hooker*, 841 F.2d 1225, 1229 (4th Cir. 1988) (*en banc*).

To challenge the sufficiency of an indictment, a defendant must “demonstrate that the allegations therein, even if true, would not state an offense.” *United States v. Thomas*, 367 F.3d 194, 197 (4th Cir. 2004). Where, even taking all the allegations in the indictment as true, the government fails to allege all essential elements of an offense, courts have dismissed the

indictment and vacated any conviction thereunder. *See, e.g., United States v. Spruill*, 118 F.3d 221, 227 (4th Cir. 1997) (vacating conviction where count failed to charge essential element of offense); *Daniels*, 973 F.2d at 275–76 (reversing conviction and remanding with instructions to dismiss count that was “fatally defective because it failed to specifically include every essential element of the charged offense”).

18 U.S.C. § 951(a) provides that “[w]hoever, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Attorney General . . . shall be fined under this title or imprisoned not more than ten years, or both.” Subsection (d) defines an “agent of a foreign government” as “an individual who agrees to operate within the United States subject to the direction or control of a foreign government or official, except that such term does not include . . . any person engaged in a *legal commercial transaction*.” 18 U.S.C. § 951(d)(4) (emphasis added). Under applicable Department of Justice regulations, a “legal commercial transaction” for the purposes of 18 U.S.C. § 951(d)(4) is “any exchange, transfer, purchase or sale, of any commodity, service or property of any kind, including information or intellectual property, not prohibited by federal or state legislation or implementing regulations.”⁶ 28 C.F.R. § 73.1(f). Further infused into the statute is subsection (e), which provides that “[n]otwithstanding paragraph [§ 951](d)(4), any person engaged in a legal commercial transaction shall be considered to be an agent of a foreign government, for the purposes of this section if . . . such person agrees to operate within the United States subject to the direction or control of a foreign government or official; and such

⁶ This definition appears to have been promulgated pursuant to 18 U.S.C. § 951(b), which provides that “[t]he Attorney General shall promulgate rules and regulations establishing the requirements for notification.” Although not made specifically applicable to the definition of “legal commercial transaction” in Section 951(e), there does not appear to be any reason not to apply it to that subsection as well.

person” is an agent of certain specified countries⁷ or has been convicted of, or entered a plea of nolo contendere with respect to, certain offenses. 18 U.S.C. § 951(e).

Neither the Supreme Court nor the Fourth Circuit has decided whether proof of conduct other than an excluded “legal commercial transaction” is a necessary element of an offense under 18 U.S.C. § 951 and therefore must be alleged and proven by the United States in order to establish a violation of Section 951, or whether the absence of such proof is an affirmative defense, and therefore does not need to be alleged or proven in order to establish a violation of Section 951.⁸ Based on Section 951’s text, structure, and legislative history, the Court concludes that the legal commercial transaction limitation on Section 951’s coverage constitutes a substantive offense element rather than an affirmative defense.

An element of an offense is “one whose specification . . . is necessary to establish the very illegality of the behavior.” *Hooker*, 841 F.2d at 1231 (internal citation and quotation marks omitted). An affirmative defense, on the other hand, “operate[s] to excuse criminal liability”; that is, it “does not negate an element of a crime” but instead “excuses punishment for a crime the elements of which have been established and admitted.” *United States v. Thompson*, 554 F.3d 450, 452 n.2 (4th Cir. 2009) (quoting *Smart v. Leake*, 873 F.2d 1558, 1575 n.22 (4th Cir. 1989)) (internal quotation marks omitted).

⁷ The government does not contend that this list of specified countries includes Turkey, the foreign government alleged to be involved here.

⁸ In an unpublished opinion, one district court has concluded that 18 U.S.C. § 951(a) sets forth all of the elements of a Section 951 charge, and that the exceptions stated in 18 U.S.C. § 951(d) must be raised and proven as affirmative defenses by the defendant. *United States v. Duran*, 2008 WL 11333989, *2 (S.D. Fla. Oct. 10, 2008), *aff’d on other grounds*, 596 F.3d 1283 (11th Cir. 2010). In reaching that decision, the *Duran* court relied in part on the definition of an affirmative defense adopted by the Eleventh Circuit. Although the Eleventh Circuit appears to have a narrower definition of affirmative defenses than the Fourth Circuit, *see United States v. Jackson*, 926 F. Supp. 2d 691, 716 (E.D.N.C. 2013), and *Duran* can be distinguished on that basis, the Court more fundamentally reaches a different conclusion than *Duran* for the reasons stated herein.

In *McKelvey v. United States*, 260 U.S. 353, 357 (1922), the Supreme Court explained with regard to exceptions in statutory schemes that “it has come to be a settled rule . . . that an indictment or other pleading founded on a general provision defining the elements of an offense, or of a right conferred, need not negative the matter of an exception made by a proviso or other distinct clause, whether in the same section or elsewhere, and that it is incumbent on one who relies on such an exception to set it up and establish it.” But the Supreme Court has also acknowledged that there are some cases where

the exception, though in a subsequent clause or section, or even in a subsequent statute . . . is so incorporated as an amendment with the words antecedently employed to define the offence, that it would be impossible to frame the actual statutory charge . . . without an allegation showing that the accused was not within the exception contained in the subsequent clause, section, or statute. Obviously such an exception must be pleaded, as otherwise the indictment would not present the actual statutory accusation, and would also be defective for the want of clearness and certainty.

United States v. Cook, 84 U.S. 168, 175 (1872). Under these circumstances, what could, on the face of the statute, look like an exception, and therefore an affirmative defense, rather than an element, may be so embedded and integral to the statutory charge that it is in fact an offense element that must be pled.

Section 951 is such a statute. It imposes criminal liability on “[w]hoever . . . acts . . . as an agent of a foreign government . . .” 18 U.S.C. § 951(a). In subsection (d), an “agent” is defined as “an individual who agrees to operate within the United States subject to the direction or control of a foreign government or official,” but “does not include — any person engaged in a legal commercial transaction.” 18 U.S.C. § 951(d)(4). Section 951 therefore defines “agent” so as to exclude an exceptionally broad category of potential defendants — namely, “any person engaged in a legal commercial transaction.” Under this statute, a person engaged in a legal commercial transaction cannot be “an agent,” and therefore subject to the statute, even if that

person has “agree[d] to operate within the United States subject to the direction or control of a foreign government or official.” By defining “agent” in this fashion, the statute does not excuse an established criminal act, as an affirmative defense would; instead, it has “render[ed] the underlying conduct noncriminal.” *See Smith v. United States*, 568 U.S. 106, 111–12 (2013). Accordingly, to establish that a person is covered under the statute in the first instance, there must be proof that the person engaged in some conduct other than an excluded legal commercial transaction when acting at the control or direction of a foreign government or official. Such proof is therefore a “specification . . . necessary to establish the very illegality of the behavior.” *Hooker*, 841 F.2d at 1231 (citation and quotation marks omitted). For these reasons, Section 951 is fundamentally different in structure than a statute that imposes liability on any person who agrees to operate subject to the direction or control of a foreign government or official, but nevertheless excuses that liability because the conduct that subjected that person to liability was excluded conduct.⁹

The government argues that *McKelvey* establishes a mechanical distinction between affirmative defenses “set out in distinct clauses or provisions,” versus language set forth in the “general provision defining the elements of an offense,” and that because “Section 951(a) defines the offense and sets out the prohibited conduct,” and because “[t]he ‘legal commercial transaction’ language relied upon by [Rafiekian] does not appear in Section 951(a)” but is instead set out in subsection (d), it must “be treated as giving rise to an affirmative defense.” [Doc. No. 228] at 8, 10. But under the pronouncements in *Cook*, the distinction between an

⁹ FARA imposes liability precisely in this fashion. *See* 22 U.S.C. § 612(a). Under Section 612(a), not charged in this case, criminal liability is imposed on “every person who becomes an agent of a foreign principal.” “Agent of a foreign principal” is defined extremely broadly to include “any person” who engages in virtually any activity that benefits a foreign principal other than “bona fide news or journalistic activities,” *see* 22 U.S.C. § 611(c), (d), or any conduct exempted under 22 U.S.C. § 613.

offense element and an affirmative defense is a *substantive* distinction, not a mechanistic distinction that turns on the placement of statutory clauses. *See also United States v. Prentiss*, 256 F.3d 971, 979–80 (10th Cir. 2001) (*en banc*) (“*McKelvey’s* general provision/proviso dichotomy is only one interpretative aid among several that should be applied in parsing statutes that define offenses”). To get out from under this analysis, the United States relies heavily on *United States v. Royal*, 731 F.3d 333 (4th Cir. 2013). However, the statute at issue in that case is structured fundamentally differently than Section 951 and the Fourth Circuit’s analysis in *Royal* is easily squared with the principles articulated in *Cook*.

Royal involved a prosecution under 18 U.S.C. § 922(g), which prohibits certain persons from knowingly possessing “any firearm or ammunition” in interstate commerce. “Ammunition” and “firearm” are defined terms, whose definitions are set out in separate subsections of a different section. *See* 18 U.S.C. §§ 921(a)(17)(A) (defining ammunition), (a)(3) (defining firearm). In pertinent part, the definition of “ammunition” includes any projectile “designed for use in any firearm.” The definition of “firearm” excludes an “antique firearm,” which is defined in another subsection, 18 U.S.C. § 921(a)(16). The defendant contended that the government was required to prove as part of its case in chief that the ammunition he possessed was not ammunition that was designed for use only in an antique firearm. The Court rejected that reading of the statutory scheme and held that whether a covered person possessed ammunition that was usable only in an antique firearm was an affirmative defense, not an element of the offense.

In reaching that conclusion, the Fourth Circuit specifically distinguished between an aspect of a statutory scheme, such as the exclusion of an antique firearm from the definition of “firearm,” which “stands alone as a separate sentence untethered to the general definition of ‘firearm,’” and the “designed for use in any firearm” portion of the definition of “ammunition,”

which it deemed “part and parcel of the definitional sentence.” *Royal*, 731 F.3d at 338–339. “Consequently, it is the government’s initial burden to prove as an element of the [Section 922(g)(1)] offense that the rounds were ‘designed for use in any firearm,’” but it is the defendant’s burden to prove as an affirmative defense that the ammunition at issue was usable only in an antique firearm, and therefore not ammunition usable in “any firearm” covered by the statute. *See id.* at 339. Significant to the Court was that Section 922(g) criminalized a broad range of behavior—a felon’s possession of all manner of “firearms”—but in a separate section carved out a narrow exception for “antique firearm[s],” i.e., those manufactured before 1898. 18 U.S.C. § 921(a)(3).

Here, unlike in *Royal*, the “legal commercial transaction” language of Section 951 is “part and parcel of the definitional sentence” of “agent,” just as “designed for use in any firearm” is part and parcel of the definition of “ammunition.” Also unlike the narrow antique firearms exception in the statute in *Royal*, Section 951(d), even in light of the inclusions set forth in 951(e), references conduct so broad as to encompass and exempt virtually all legal commerce from the statute’s notice requirement.

The Court’s conclusion as to Section 951 is also consistent with the Fourth Circuit’s analysis in *United States v. Daniel*, 3 F.3d 775 (4th Cir. 1993). *Daniel* involved the prosecution of a medical doctor under 21 U.S.C. § 841, which provides in relevant part that, “[e]xcept as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally — to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.” 21 U.S.C. § 841(a)(1). A separate section, 21 U.S.C. § 822(b), “authorizes distribution and dispensation by registrants,” usually medical doctors, “to the extent authorized by their registration and in conformity with the other provisions of this subchapter.”

Daniel, 3 F.3d at 778 (quoting 21 U.S.C. § 822(b)). The Fourth Circuit read those two sections together, finding that the government was required to allege as an element of the offense that the distribution was done “in a way not authorized by this subchapter,” a requirement satisfied by “[t]he indictment’s allegations that the attempted distributions or dispensations were not for a legitimate medical purpose.” *Id.* (internal quotation marks and alterations omitted). Similarly, Sections 951(a) and 951(d) can and should be read together to require the government to allege that the person has “act[ed] in the United States as an agent of a foreign government without prior notification to the Attorney General,” and that the relevant “acts” are not “legal commercial transaction[s].” 18 U.S.C. § 951(a), (d)(4).

The Court’s construction of Section 951 also finds support in the statute’s legislative history. After the statute was amended in 1948, it penalized anyone “other than a diplomatic or consular officer or attaché” who “acts in the United States as an agent of a foreign government without prior notification to the Secretary of State,” without further qualification. Pub. L. No. 80-772, § 951, 62 Stat. 683, 743 (1948); *see United States v. Duran*, 596 F.3d 1283, 1295 n.7 (11th Cir. 2010). But at a congressional hearing in 1982, the Department of Justice warned Congress that at least one federal court had expressed concerns as to the vagueness of the statute. *See Communist Bloc Intelligence Gathering Activities on Capitol Hill: Hearing on S. 1959 and S. 1963 Before the S. Comm. on Security and Terrorism, 97th Cong. 37* (1982) (statement of Mark Richard, Deputy Assistant Att’y Gen., Criminal Division, Department of Justice) (“[T]he Department does believe that the Congress should define the term ‘agent of a foreign government’ . . . narrowly to avoid the problems presented in [a] recent . . . case in Philadelphia, in which the judge indicated that in the absence of clarifying regulations Section 951 was too

vague to adequately warn defendants that their conduct was proscribed.”). The State Department agreed and also urged a narrower definition of the term “agent of a foreign government”:

We share the Department of Justice’s concern that the absence of a definition of “agent of a foreign government” may cause problems. . . . We also believe that certain legitimate activities in this country on behalf of foreign governments should be exempt from the statute. I have in mind American attorneys who represent foreign governments in American courts and individuals involved in legitimate business activities on behalf of a foreign client.

Id. at 27–28 (statement of Jeffrey H. Smith, State Department); *see also id.* at 31 (among individuals who “need not, in our view, register with the Attorney General” are “people engaged in legitimate representation of foreign governments in commercial activities”). Congress added subsection (d) to Section 951 in 1984 in response to these executive and judicial branch constitutional concerns about an overbroad definition of the word “agent.” *See* Pub. L. No. 98-473, § 1209, 98 Stat 1837, 2164 (1984); S. REP. NO. 98-225, at 415 (1983) (stating that the amendment was designed to “limit[] the coverage of the statute by focusing only on those in whom the United States government has a necessary interest” by narrowing the statute’s reach to, among other things, no longer “cover those individuals engaged in routine commercial matters”). Requiring that the government prove that the defendant engaged in some conduct other than an excluded legal commercial transaction is therefore in accordance with Congressional intent.¹⁰

Because the text, structure, and history of Section 951 support the conclusion that the legal commercial transaction provision in subsection (d) establishes an offense element rather than an affirmative defense, the question becomes whether the Superseding Indictment

¹⁰ The government finds it “notable” that the Fourth Circuit easily ascertained the elements of the “earlier version of Section 951, which provided no definition for the term ‘agent of a foreign government.’” [Doc. No. 228] at 11 (citing *United States v. Truong Dinh Hung*, 629 F.2d 908, 920 (4th Cir. 1980)). But the Fourth Circuit’s interpretation of Section 951 before the addition of subsection (d) sheds little light on how that newly added provision should be treated for the purposes of allocating the burdens of proof.

sufficiently alleges that Rafiekian engaged in activity other than an excluded legal commercial transaction. “[W]hen an indictment fails to include an essential element of the offense charged, it thereby fails to charge any federal offense,” and the proper recourse is dismissal. *United States v. Pupo*, 841 F.2d 1235, 1239 (4th Cir. 1988) (“We have uniformly dismissed on objection before verdict indictments for failure to include an essential statutory element despite the inclusion of a citation to the statute itself in the indictment.”). Because “[t]he Fifth Amendment requires a grand jury to examine and find sufficient evidence of every element of the offense listed in the indictment,” *United States v. Darby*, 37 F.3d 1059, 1064 n.3 (4th Cir. 1994), “mere reference to the applicable statute does not cure the defect,” *id.* at 1063. For the same reason, “a jury instruction cannot cure the omission from the indictment of an essential element of the offense.” *Id.* at 1064 n.3.

The Superseding Indictment does not specifically allege that Rafiekian engaged in conduct other than an excluded legal commercial transaction. It does, however, allege the specific conduct that subjects Rafiekian to criminal liability. Summarized generally, Rafiekian is alleged to have engaged in a scheme to “covertly and unlawfully . . . influence U.S. politicians and public opinion” about Fethullah Gulen. Superseding Indictment ¶ 3. As part of this scheme, he is alleged to have (1) “visited with and lobbied a member of Congress, a Congressional staffer, and a state government official” in support of Gulen’s extradition, *id.* ¶ 30; (2) helped draft and place for publication an op-ed concerning Gulen under Flynn’s name, *id.* ¶¶ 45-50; and (3) made misrepresentations to Covington regarding Turkey’s involvement in the project in connection with FIG’s FARA filing, *see id.* ¶ 53.

Rafiekian’s lobbying and op-ed activities fall well within the definition of legal commercial transactions unless “prohibited by federal or state legislation or implementing

regulations.” 28 C.F.R. § 73.1(f). Although Rafiekian is not charged with a FARA violation under 22 U.S.C. 612(a), these activities would violate FARA, and therefore be illegal, if they are covered activities¹¹ and Rafiekian willfully engaged in them as an agent¹² of the Turkish government and without a proper FARA registration. *See* 22 U.S.C. § 618(a). Although the Superseding Indictment does not explicitly allege that Rafiekian was acting as “an agent of a foreign principal” when he willfully engaged in covered lobbying or public relations activities without the required FARA filing, it does allege that the FARA statement that was filed failed to disclose, as required, that Rafiekian had acted on behalf of the Turkish government. *See, e.g.,* Superseding Indictment, ¶¶ 56, 57. Although a close issue, given the standards against which the sufficiency of an indictment is to be determined,¹³ the Court cannot conclude that the indictment is fatally defective with respect to Count Two based on these allegations.¹⁴

Rafiekian also contends that Count One, charging a conspiracy to violate Section 951, must also be dismissed. This contention is based on his claim that the Superseding Indictment

¹¹ Under FARA, covered activities include “political activities for or in the interests of [a] foreign principal” as well as acting as “public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of [a] foreign principal.” 22 U.S.C. § 611(c)(1)(i), (ii).

¹² An “agent” under FARA is defined much more broadly than under 18 U.S.C. § 951: FARA defines an “agent of a foreign principal” as “any person who acts . . . at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal.” 22 U.S.C. § 611(c)(1).

¹³ For this reason, the Court does not at this time assess the substance of the allegations in light of the substantial evidence that has been submitted in connection with the other pending motions, which raise substantial factual issues as to the Superseding Indictment’s allegations pertaining to falsity, materiality, scienter, and agency.

¹⁴ The same cannot be said with respect to the allegations concerning Rafiekian’s alleged misrepresentations to Covington. While the Superseding Indictment alleges that Rafiekian’s lobbying activities and involvement with the op-ed were conducted under the direction and control of the Turkish government, it does not allege that Rafiekian was acting under the direction and control of the Turkish government when he made the alleged false statements to Covington. That is, the government claims that Turkey directed FIG’s work between August and November 2016 (culminating in the publication of the op-ed), but it does not allege any direction or control by the Turkish government in connection with the March 7, 2017 FARA filing itself. Nor can one draw from the Superseding Indictment any such inference. The FARA filing was first contemplated only after FIG and Flynn retained Covington in December 2016, and Rafiekian’s alleged misrepresentations to Covington were made between January and March 2017, by which time FIG’s 90-day contract with Inovo had expired, FIG had ceased doing business, and Flynn had become the National Security Advisor designate for the Trump administration. As such, the alleged false statements are not a sufficient basis for a Section 951 charge that Rafiekian acted as a foreign agent with respect to some activity other than a legal commercial transaction.

fails to adequately allege a violation of Section 951, which the Court has rejected; but regardless of the adequacy of Count Two, the actual commission of a substantive offense is not a required element of a conspiracy to commit that offense, and dismissal of a conspiracy count is therefore not required whenever a substantive count is found to be deficient. See *Wong Tai v. United States*, 273 U.S. 77, 81 (1927) (“It is well settled that in an indictment for conspiring to commit an offense—in which the conspiracy is the gist of the crime—it is not necessary to allege with technical precision all the elements essential to the commission of the offense which is the object of the conspiracy[.]”) (citations and internal quotation marks omitted). To charge a conspiracy, “all that is necessary in the indictment is that the object of the conspiracy be set forth sufficiently to identify the offense which the defendant is charged with conspiring to commit.” *United States v. Matzkin*, 14 F.3d 1014, 1019 (4th Cir. 1994)). The allegations in the Superseding Indictment are sufficient to satisfy this standard.

Finally, Rafiekian contends that the charged conspiracy to violate Section 618(a)(2) in Count One must be dismissed since the Superseding Indictment does not sufficiently allege an agreement to violate that statute by making a materially false FARA filing. At this stage, however, the Superseding Indictment sufficiently alleges that Rafiekian and Alptekin, “together with others known and unknown, knowingly and intentionally conspired” to “willfully” make false statements and omissions of material fact in a FARA filing, in violation of 22 U.S.C. § 618(a)(2). The Superseding Indictment also alleges the timeframe during which the conspiracy took place, the object of the conspiracy, and the offense which Rafiekian is charged with conspiring to commit. See *Matzkin*, 14 F.3d at 1019 (requiring only that the object of the

conspiracy be set forth sufficiently to identify the object of the charged conspiracy).¹⁵

Accordingly, Count I of the Superseding Indictment will not be dismissed.

B. Motion to Exclude Co-Conspirator Statements

The Superseding Indictment charges Rafiekian with conspiring with Alptekin and senior Turkish government officials to violate two different criminal statutes: 18 U.S.C. § 951, which prohibits acting as an agent of a foreign government without prior notification to the Attorney General; and 22 USC § 618(a)(2), which prohibits willfully making false or misleading statements in a FARA registration statement. The United States seeks to admit the statements of alleged co-conspirators based on the exception to the hearsay rule set forth in Fed. R. Evid. 801(d)(2)(E), which provides that a statement is not hearsay if it is offered against an opposing party and “was made by the party’s coconspirator during and in furtherance of the conspiracy.” Rafiekian has moved to exclude these out-of-court co-conspirator statements.¹⁶

Fed. R. Evid. 801(d)(2)(E) reflects the Supreme Court’s holding in *Bourjaily v. United States*, 483 U.S. 171, 175 (1987) that, in deciding whether otherwise hearsay statements of an alleged co-conspirator are admissible, courts should consider the contents of the statement in determining the existence of the conspiracy, the participation therein of the declarant and the party against whom the statement is offered, and that the statement was made “during the course of and in furtherance of the conspiracy.” These preliminary questions are to be considered under Rule 104(a), which provides in relevant part that “[t]he court must decide any preliminary

¹⁵ Rafiekian contends that the Superseding Indictment simply alleges separate or parallel conduct on the part of Rafiekian and the alleged co-conspirators rather than an actual conspiracy, but this contention is in effect a challenge to the sufficiency of the government’s evidence, which is premature at this stage. *See, e.g., United States v. Engle*, 676 F.3d 405, 415 (4th Cir. 2012) (“[A] court may not dismiss an indictment . . . on a determination of facts that should have been developed at trial.”).

¹⁶ Specifically, Rafiekian moves to exclude the out-of-court statements referenced in paragraphs 5, 6, 7, 9, 14, 15, 16, 20, 21, 28, 39, 40, 41, 42, 44, 49, and 54 of the Superseding Indictment, as well as any additional out-of-court statements by any co-conspirator. [Doc. No. 155] at 2.

question about whether . . . evidence is admissible” and that “[i]n so deciding, the court is not bound by evidence rules[.]” “[W]hen the preliminary facts relevant to Rule 801(d)(2)(E) are disputed, the offering party must prove them by a preponderance of the evidence.” *Bourjaily*, 483 U.S. at 176. *Bourjaily*’s holding was codified and extended by the 1997 amendments to Rule 801(d)(2)(E), which provide that while the contents of the offered statement must be considered, it cannot by itself establish the existence of a conspiracy or the defendant’s and declarant’s participation therein. Rather, “[t]he court must consider in addition the circumstances surrounding the statement, such as the identity of the speaker, the context in which the statement was made, or evidence corroborating the contents of the statement in making its determination as to each preliminary question.” Fed. R. Evid. 801(d)(2)(E), Comments to 1997 Amendments.

A conspiracy is an agreement between two or more persons to accomplish an unlawful objective or a lawful objective through an unlawful act. For the purposes of Fed. R. Evid. 801(d)(2)(E), the Court is not limited to those conspiracies alleged in the indictment, but may admit, subject to relevancy considerations, any statements of any co-conspirators involved in any conspiracy in which the defendant knowingly participated. *Cf. United States v. Frol*, 518 F.2d 1134, 1136 (8th Cir. 1975) (citing *United States v. Nixon*, 418 U.S. 683 (1974)) (finding co-conspirator statements properly admissible against all conspirators, even when no conspiracy was actually charged). For this reason, the Court has considered not only whether the United States has made the requisite showing with respect to the conspiracy alleged in Count One, but also any other conspiracy, whether charged or not.

In its opposition to the Motion to Exclude Co-Conspirator Statements [Doc. No. 198], the United States does not attach any documents as exhibits to the Motion, but instead references the Superseding Indictment and documents attached as exhibits to other pending motions; and in

assessing whether the government has presented sufficient evidence of a conspiracy for the purposes of Rule 801(d)(2)(E), the Court has considered all of the documents and information presented in connection with the pending motions, including the Government's Motions to Establish Crime-Fraud Exception [Doc. Nos. 173 and 182].¹⁷ Notably absent from the government's proffer is any evidence from Michael Flynn, who, as discussed above, has admitted that he made certain false statements in the FARA filing that was the object of one prong of the charged conspiracy and has entered into a cooperation agreement with the United States that extends to this prosecution. *See* Tr. of June 13, 2019 Mot. Hrg., 65:9-22.

Based on the evidence presented pertaining to the contents, circumstances, and context of the alleged co-conspirator statements, including subsequent events and other evidence pertaining to the conduct of the Defendant and other alleged co-conspirators, the Court concludes at this point that the government has not established under Rule 104 the existence of a conspiracy in which Rafiekian was a participant by a preponderance of the evidence for the purposes of admitting otherwise hearsay statements pursuant to Rule 801(d)(2)(E).

The proffered evidence reflects discussions between Alptekin and Rafiekian concerning the retention of FIG's and Flynn's consulting services, none of which on their face reflect or suggest any agreement to have Rafiekian operate as an undisclosed Turkish agent or cause the filing of a false FARA statement. The evidence does reflect the interest and involvement of the

¹⁷ Summarized generally, these documents and evidence include (1) a series of e-mails between July 27, 2016 and November 2, 2016, some with attached documents, between Rafiekian, Alptekin, and/or Flynn, some of which contain the statements of other alleged co-conspirators sought to be admitted, principally statements attributed by Alptekin to Turkish government officials; (2) documents relating to the nature of FIG's work on behalf of Inovo; (3) evidence regarding the September 19, 2016 meeting in New York City between Rafiekian, Alptekin, Flynn, and high level Turkish officials regarding the project; (4) evidence of the structure of the payments between FIG, Inovo, and Alptekin, and in particular the twenty percent share of FIG's fees that Alptekin received as "consultancy fees"; and (5) the allegedly false statements in the FARA registration statement filed by Covington on FIG's behalf on March 7, 2017.

Turkish government in the project, including discussions between Alptekin and Turkish officials concerning setting a budget for FIG's contemplated work, *see* GEX 9, 16, and approving Alptekin's/Inovo's retention of FIG and/or Flynn, *see* GEX 14, 15, and, when viewed in its entirety, it sufficiently establishes under Rule 104 for the purposes of Rule 801(d)(2)(E) that Alptekin/Inovo was acting on behalf of the Turkish government; that the actual contract between Inovo and FIG was entered into by Inovo on behalf of and at the direction of the Turkish government; and that FIG was acting at the direction and under the control of Inovo. But one cannot sufficiently infer from this evidence that *Rafiekian* was conspiring to act as an undisclosed Turkish agent or to cause the filing of a false FARA statement. There is some mention of "confidentiality" and limiting the number of people privy to the discussions concerning the retention of FIG in communications between Alptekin and Rafiekian, but those references are in the context of Alptekin's then on-going, preliminary, formative business discussions with FIG. *See* GEX 9. Moreover, any inference of an agreement by Rafiekian to act as an undisclosed Turkish agent is substantially undercut by his contemporaneous conduct, which included seeking out legal advice concerning his FARA disclosure obligations in August 2016 (from Covington) and again in September 2016 (from Kelley), and subsequently filing an LDA disclosure statement pursuant to Kelley's advice.

Similarly, the FARA statement and related filings do not reflect the existence of the alleged conspiracy to act as undisclosed Turkish agents or to cause the filing of a false FARA statement, or Rafiekian's knowing participation in any such conspiracy. The government contends that the FARA statement contains materially false statements, attributable to Rafiekian. But what was disclosed in the FARA statement is not sufficient to allow any inference of the alleged conspiracies. Those disclosures include that (1) Turkey could be viewed as the primary

beneficiary of FIG's work; (2) FIG worked at the direction of and under the control of Inovo, a foreign principal; (3) FIG was aware that Alptekin and Inovo consulted with Turkish officials regarding potential work by FIG, and Alptekin introduced FIG officials to Turkish officials at a meeting on September 19, 2016,¹⁸ but Inovo had represented to FIG, through Inovo's counsel, that no part of its fees paid to FIG was provided by any foreign government; (4) FIG's work for Inovo pertained to both the business climate in Turkey and to Gulen;¹⁹ (5) Rafiekian and others participated in the drafting of the op-ed;²⁰ and (6) Alptekin, through counsel, made representations concerning the retention of FIG that were not endorsed by FIG or its principals.²¹

¹⁸ The FARA filing described the September 19, 2016 meeting between FIG officials and Turkish officials as "for the purpose of understanding better the political climate in Turkey at the time, as background for the project." GEX 61 at 10–11.

¹⁹ As reflected in the government's exhibits submitted in connection with the Motions, FIG's work pertaining to both Gulen and the business climate in Turkey was discussed internally under the name Project/Operation Confidence. *Compare* GEX 23B (discussing promoting Turkey's business climate as part of "Operation Confidence") with GEX 43B (discussing work pertaining to Gulen as part of "Project Confidence"). But whether this representation was accurate or not, the fact of disclosure, particularly given the other FARA disclosures concerning Turkish involvement in the project and FIG's and Flynn's activities pertaining to Gulen, minimizes the probative value of any allegedly inaccurate descriptions of the work FIG performed for Inovo for the purposes of determining whether a conspiracy existed to act as an undisclosed Turkish agent for the purposes of Rule 801(d)(2)(E).

²⁰ The allegedly false FARA statement concerning the op-ed is the following:

In late October and early November 2016, Gen. Flynn of Flynn Intel group developed an op-ed article based, in part, on the research conducted by Flynn Intel group under the Inovo engagement. The op-ed was not written or published at the request of, or under the direction or control of, Inovo, the Republic of Turkey, or any other party. No compensation was received for the publication of the op-ed. In addition to Gen. Flynn, Bijan Rafiekian and an editor, Hank Cox, participated in the drafting. Inovo, Mr. Alptekin, and the Republic of Turkey did not participate in the drafting. Nonetheless, the op-ed addresses the subject matter related to the research that Flynn Intel Group conducted for Inovo, and a draft of the op-ed was shared with Inovo in advance of publication. No changes, other than technical edits, were made in the op-ed based on feedback from Inovo. To the best of our knowledge, Inovo did not communicate with the Republic of Turkey regarding the op-ed or provide the draft op-ed to the government.

GEX 61 at 11.

²¹ Specifically, Alptekin's counsel represented:

At the time Inovo hired Flynn Intel Group, Inovo represented a private sector company in Israel that sought to export natural gas to Turkey, and it was for support of its consulting work for this client that Inovo engaged Flynn Intel Group, specifically to understand the tumultuous political climate at the time between the United States and Turkey so that Inovo could advise its client regarding its business opportunities and investment in Turkey.

GEX 58 at 3.

See generally GEX 58, 61. In this regard, there is no contention, or evidence proffered, that Covington (who was concededly not part of any conspiracy) wrote and filed the FARA disclosures without the benefit of the e-mails and other documents the government contends reflects the alleged conspiracy.²²

The government also relies centrally on the aspect of the consulting agreement between FIG and Inovo that provides for Alptekin to receive twenty percent of the fees paid to FIG from Inovo. Whatever inferences can be reasonably drawn from that arrangement, one cannot reasonably infer an agreement or understanding that Rafiekian would act as an undisclosed Turkish agent or cause the filing of a false FARA statement.

The government also contends, in the alternative, that the emails should be admitted as “adoptive admissions” pursuant to Fed. R. Evid. 801(d)(2)(E). Rule 801(d)(2)(e) provides that a statement is not hearsay if it is offered against an opposing party and “is one the party manifested that it adopted or believed to be true.” The Court has examined that contention in light of the applicable considerations, including the substance of the statements and the circumstances under which they were received, and finds that they do not satisfy the requirements for “adoptive admissions.”

For the above reasons, Defendant’s Motion to Exclude Co-Conspirator Statements is granted to the extent set forth above. This ruling is without prejudice to the government’s presenting additional evidence at trial to establish the necessary foundation for the admission of evidence pursuant to Rule 801(d)(2)(E), or with proper foundation and a limiting instruction, the

²² After FIG waived any privilege with respect to information provided to Covington, Covington lawyers were interviewed by the government with respect to “factual representations made to counsel, in connection with preparation of FIG’s FARA filing; the sources of such factual representations; . . . and [w]hen, how, and in what form counsel received communications from FIG personnel concerning the content of the FARA filing.” Ex. 4 to Opp. to Mot. to Exclude Privileged Information at 2.

admission of e-mails or other communications to Rafiekian as evidence of what information he was provided concerning Turkish involvement in the project or any other relevant issue.

C. Privilege Issues

FIG, acting through Flynn, retained Covington and Verderame for the purposes of determining whether a FARA filing was required and if so, to prepare and file that FARA disclosure. For that purpose, Flynn and Rafiekian provided information to Covington and Verderame in connection with the FARA filing. Covington also obtained information from Flynn and Alptekin through his counsel.

The United States seeks to admit Rafiekian's statements to Covington based on their non-privileged nature, and also, in the alternative, under the crime-fraud exception. Rafiekian seeks to exclude his statements to Covington on the grounds that (1) they were privileged and not made for the purposes of committing any crime; (2) the crime-fraud exception would not extend in any event to opinion work product statements from Covington lawyers concerning their recollection of statements made by Rafiekian; and (3) any relied upon waiver of the attorney-client privilege made by Flynn on behalf of FIG is invalid. These issues present complicated issues of law and fact arising out of whether the communications by Rafiekian to Covington were made by Rafiekian personally, or as a representative of FIG; and whether Covington's opinion work product with respect to those communications is protected. These issues, in turn, raise questions concerning the scope and nature of Covington's representation as to FIG and Rafiekian at any particular point in the representation; and the validity and effect of Flynn's waiver of FIG's privilege in light of FIG's dissolution, the basis upon which it was dissolved, and Flynn's purposes in dissolving FIG and waiving privilege.

Covington's retention was formally between Covington and FIG pertaining to FARA and separately between Covington and Flynn personally. Rafiekian does not appear to have personally retained Covington. Nevertheless, as the Court has previously ruled, under the particular circumstances of this case, and given the nature and structure of FIG, Rafiekian, as a principal officer, shareholder and one of two directors, was, like Flynn, a "client" of Covington for the purpose of access to Covington's files. A separate issue, however, is whether Rafiekian can waive any privilege on behalf of FIG.

Information provided to a lawyer for the purposes of a public filing is not privileged. *Martin Marietta*, 856 F.2d at 623 ("[I]f a client communicates information to his attorney with the understanding that the information will be revealed to others, that information as well as the details underlying the data which was to be published will not enjoy the [attorney-client] privilege." (internal quotation marks omitted)). While even in those circumstances certain information remains privileged if for purposes other than disclosure in a public filing, the nonprivileged nature of the information provided is not limited to the information actually disclosed in the public filing but includes all information provided for the purpose of determining what should be disclosed. *See F.T.C. v. Reckitt Benckiser Pharms., Inc.*, 2015 WL 1062062, at *4 (E.D. Va. Mar. 10, 2015).

Given that it would appear at this point, without formally ruling, that the statements the government seeks to admit from Rafiekian would likely be nonprivileged statements made to Covington for the purposes of its FARA filing, the Court sees no need at this time to rule on all of these issues and will postpone those rulings that appear unnecessary at this time. For that reason, the Court makes the following limited rulings and pronouncements to guide the parties during the trial.

1. The information FIG, acting through Flynn and Rafiekian, and Alptekin, acting through its counsel, provided to Covington and Verderame for the purposes of the public disclosures in the FARA filing is not privileged attorney-client information; and such information may be disclosed without any waiver of privilege by FIG, Flynn, Rafiekian or Alptekin. To the extent that Rafiekian contends that specific statements from him to Covington or Verderame remain privileged because they are not sufficiently related to the FARA filing and the privilege has not been validly waived, the Court will consider those specific statements as the government proffers them before their admission.

2. Rafiekian's statements to Covington, obtained only after the DOJ inquiry concerning FIG's and Flynn's FARA obligations, were within a context and under circumstances sufficiently associated with an adversarial process and the prospect of litigation that Covington's recollections of those statements, including its memorialization of those statements, constitute opinion work product. *In re Grand Jury Subpoena*, 870 F.3d 312, 317–18 (4th Cir. 2017). Application of the crime-fraud exception to such work product therefore requires a *prima facie* showing that the attorneys involved were aware of or knowing participants in the criminal conduct or scheme, *In re Grand Jury Proceedings #5 Empaneled Jan. 28, 2004*, 401 F.3d 247, 252 (4th Cir. 2005), a contention the government has repeatedly and explicitly rejected in this case, *see, e.g.*, [Doc. No. 173] at 1–2. Accordingly, to the extent that Rafiekian's statements to Covington in connection with the FARA filing were otherwise privileged, the crime-fraud exception, if it applied under the facts of this case, would not extend to that work product.

3. Notwithstanding the near absolute immunity enjoyed by attorney opinion work product, where that work product relates centrally to the actions or conduct of a lawyer at issue in a case, such that consideration of the attorney's opinion work product, including their

recollections and impressions, are essential to a just and fair resolution, opinion work product protections otherwise applicable do not apply. *See, e.g., In re John Doe*, 662 F.2d 1073, 1080 (4th Cir. 1981) (finding no opinion work product protection where attorney's prior representation was a target of the grand jury investigation); *Sec. Exch. Comm'n v. Nat'l Student Mktg. Corp.*, 1974 WL 415, *3-4 (D.D.C. June 25, 1974) (finding no opinion work product protection where at issue was what a law firm did and did not know). Here, while there is no contention that Covington or Verderame committed any crime, what they did and why is central to this case as their actions are claimed to have resulted in a crime attributable to Rafiekian. For these reasons, any opinion work product by Covington or Verderame that pertains to the FARA filing is not protected.

D. Motion to Preclude Argument on Turkey Funding

Rafiekian has also moved to preclude the government from (1) claiming in its opening statement that evidence exists that the government of Turkey funded FIG's work for Inovo; and (2) arguing in closing that the government of Turkey funded the project. Upon consideration of the Motion, the Court grants the Motion to the extent that the Government may not state in opening statement, or until such time as the Court rules otherwise, that Turkey funded FIG's work for Inovo. It may, however, in opening statement say what the evidence will show concerning what Rafiekian was told about any funding by Turkey.

E. Motion for Additional Peremptory Challenges and Jury Questionnaire

Rafiekian requests that instead of the ten peremptory challenges typically granted to a criminal defendant he be granted sixteen. Upon consideration of the Motion, the Court will increase Defendant's peremptory challenges from ten to fifteen and the government's peremptory challenges from six to ten.

Rafiekian also requests that the jury *voir dire* panel be required to complete a questionnaire on the grounds that the high-profile public nature of this prosecution requires more in-depth information than obtainable through the usual *voir dire* process. Upon consideration of that Motion, the Court concludes that adequate inquiry can be made during the *voir dire* process without a separate jury questionnaire, and the Motion will therefore be denied. Pursuant to Local Rule 51, the parties should submit their proposed *voir dire* questions on or before July 8, 2019.

III. CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that Defendant Bijan Rafiekian's Motion to Dismiss the Indictment [Doc. No. 190] be, and the same hereby is, DENIED; and it is further

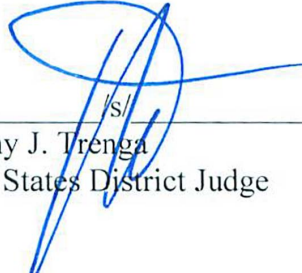
ORDERED that Defendant Bijan Rafiekian's Motion *In Limine* to Exclude Out-Of-Court Statements by Co-Conspirators [Doc. No. 154] be, and the same hereby is GRANTED in part and DENIED in part; the Motion is GRANTED to the extent that the proffered co-conspirator statements are excluded on the basis that the United States has not presented sufficient evidence of a conspiracy to establish the co-conspirator statements hearsay exception under Fed. R. Evid. 801(d)(2)(E), without prejudice to the presentation at trial of additional evidence concerning the existence of the alleged conspiracy; and the Motion is otherwise DENIED; and it is further

ORDERED that Defendant Bijan Rafiekian's Motion to Dismiss the Indictment and Exclude and Suppress Privileged Information [Doc. No. 163]; the Government's Motions to Establish the Crime-Fraud Exception as to Defendants Rafiekian [Doc. No. 173] and Alptekin [Doc. No. 182]; and Defendant Bijan Rafiekian's Motion for an Evidentiary Hearing [Doc. No. 186] be, and the same hereby are, DEFERRED, pending the presentation of evidence during trial; and it is further

ORDERED that Defendant Bijan Rafiekian's Motion *In Limine* to Preclude the Government From Arguing that Turkey Funded FIG's Work for Inovo [Doc. No. 165] be, and the same hereby is GRANTED, pending further order of the Court; and it is further

ORDERED that Defendant Bijan Rafiekian's Motion for Additional Peremptory Challenges and a Jury Questionnaire [Doc. Nos. 150 and 152] be, and the same hereby is GRANTED in part and DENIED in part; the Motion is GRANTED to the extent that the Defendant shall have 15 preemptory challenges and the United States shall have 10 preemptory challenges; and it is otherwise DENIED.

The Clerk is directed to forward copies of this Order to all counsel of record.



/s/
Anthony J. Trenga
United States District Judge

Alexandria, Virginia
July 9, 2019

memo

To: Jim Gillis and Prosecution Team in U.S. v. Rafiekian

From: Sidney Powell and Michael Flynn Defense Team

Date: June 27, 2019 [CORRECTED]

Subject: Unprivileged Material from Covington & Burling Flynn File

We have partially reviewed the materials we received from Covington & Burling as successor counsel in the Michael Flynn representation, for the chief purpose of assuring ourselves (and you) that the testimony our client will give in the Rafiekian matter is consistent with his grand jury testimony and statements made in his plea agreement and plea allocution and colloquy.

During that review, we discovered several items of interest that we hereby transmit to you. Out of an abundance of caution, we note that the items attached to this memorandum are not covered by the attorney client privilege that Michael Flynn had with Covington & Burling.

ITEM ONE.

There has been considerable discussion about the significance of the original designation of the FIG-Inovo project as the “confidence” project, with the implication that this referred to “confidence” that investors and others might have in the stability of the Turkish government and social fabric—thus concealing that the true focus was on Fethullah Gulen.

In fact, however, a long set of working papers, entitled “Statement of the Problem,” has the subtitle, “How do we restore confidence in the government of the Republic of Turkey and expose the Fethullah Gulen cult in the United States?”

It is fair to say that in the ensuing pages of the working papers, all or nearly all of the material concerns Gulen.

ITEM TWO.

On or about February 15, 2017, Covington & Burling lawyers worked with FIG lawyer Kristen Verderame to prepare a draft of a FARA Registration Statement, and a draft of an Exhibit A form. The final versions of these documents were filed on March 7, 2017.

The draft Registration Statement included a 4-page Attachment. The first page included comments about “confidence” about Turkey in the context first mentioned in connection with ITEM ONE, but immediately turned to Fethullan Gulen as well.

The next two pages of the draft Attachment included considerable information that was *omitted* from the final Registration Statement that was filed on March 7, 2017.

The last page of the draft Attachment included specific answers to the questions that had been raised in the DOJ’s original inquiry letter of November 30, 2016, specifically focusing on the op-ed that was published in *The Hill* on November 8, 2016.

None of this material was included in the Registration Statement that was filed on March 7, 2017. In particular, the response that “A draft of the op-ed was shared with Mr. Alptekin in advance of publishing. Mr. Alptekin suggested changes *but no such changes were accepted*” (emphasis supplied) was *omitted* from the final filing.

The draft Attachment to Exhibit A contained information that had been provided by Ekim Alptekin through his counsel at Arent Fox. Some, but not all, of this information subsequently appeared on the Registration Statement and Supplemental Statement filed on March 7, 2017.

memo

To: Jim Gillis and Prosecution Team in U.S. v. Rafiekian

From: Sidney Powell and Michael Flynn Defense Team

Date: September 27, 2019

Subject: Unprivileged Material from Covington & Burling Flynn File

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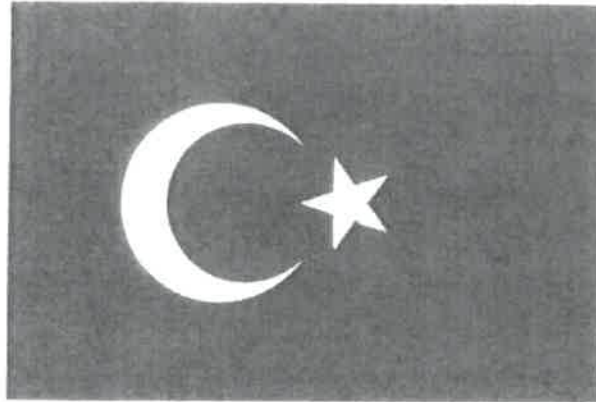
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"Working Papers"
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11/5/16



Statement of the Problem

How do we restore confidence in the government of the Republic of Turkey and expose the Fethullah Gülen cult in the United States?

Facts Bearing on the Problem and the Gülen Ecosystem

<p>Where we were on August 15, 2016</p> <p>Facing a global, strong, well masked, well funded network that enjoys tacit support in the executive and legislative branch of the U.S. Government.</p> <p>Public perception is in his favor.</p> <p>Legal battles against the irregularities or possible illegal activities in his charter schools are overlooked, pushed over and not successful.</p> <p>Strong support in Congress.</p> <p>Almost TEFLON. No one wants to see him as who he really is.</p>	<p>Where we are on November 4, 2016</p> <p>We are changing the narrative FROM:</p> <p>An aging man of God who is fighting an autocratic leader in his home country while running a network of charter schools with high quality education.</p> <p>TO:</p> <p>FG is a terrorist. He is a follower of Hasan Al Bana and <u>Sayed Qutb</u>. Founder of Muslim Brotherhood. U.S. taxpayers are funding a masked terror organization. Math and Science and English teachers from Turkey are here to brainwash our youth. He is perfecting the first phase of Jihad. Preparing the battlefield to unleash his "soldiers" at the right time.</p>	<p>Where are we headed?</p> <p>Changing the public perception.</p> <p>Educating Congress.</p> <p>Exposing Turkey's Usama Bin Laden.</p> <p>Building U.S. grassroots support to expose the true face of FG.</p> <p>Documenting the story in two effective ways:</p> <p>A three minute video teaser showing the true face of FG.</p> <p>A <u>60 minute</u> video that will be sent to all members of congress and selected USG.</p>	<p>How will we get there?</p> <p>DISCOVER AND DISPLAY</p> <p>Expose FG as a strategic national security threat.</p> <p>Deep open source intelligence</p> <p>Very senior voices with unique authority on the <u>subject</u>. Remove doubt.</p> <p>Formal congressional hearings at Foreign Affairs and Homeland Security Committees</p> <p>IRS Immigration Homeland Security</p>
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Public and Congressional Perception of Gülen



STATUS QUO = EASY TO BELIEVE

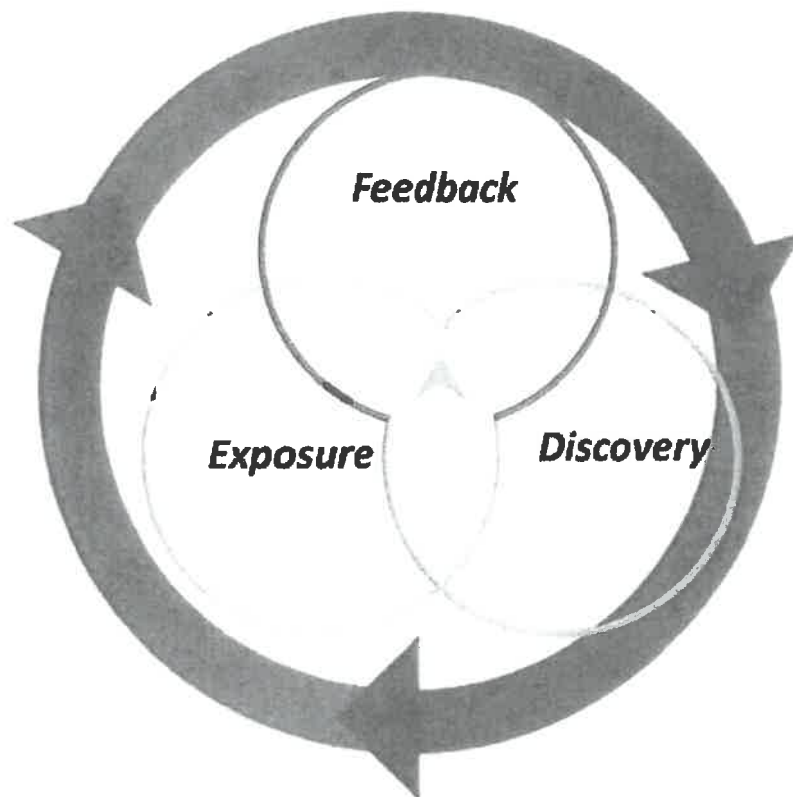
- POLITICAL PROTECTION
- DISSIDENT
- OLD MAN
- IMAM

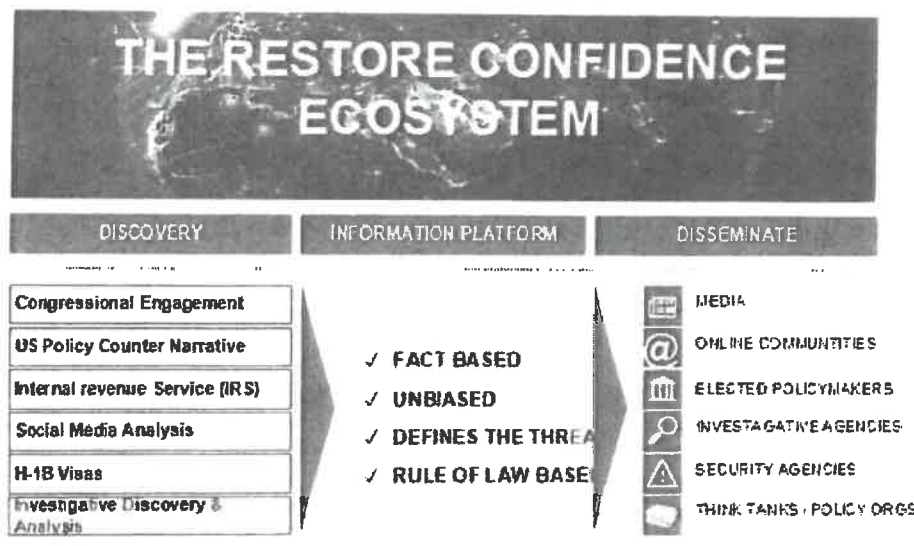


REALITY & FACTS = HARD TO BELIEVE

- COMPLEX NETWORK
- SECURITY RISK
- GLOBAL REACH

Our Roadmap Philosophy





We accomplish discovery by examining the following:

- **Public Perception**
- **Tom Neers' "looking behind the curtain" - First Phase of Jihad**
- **Congressional Action/hearings**
- **IRS, Tax irregularities and Non-profit status**
- **Immigration- H1B Visa's**
- **1782 Process of discovery**

We expose by:

- **Producing a 3 minute video with Sebastian Gorka, Philip Haney, Clare Lopez and Mike Flynn and selected other highly credible voices.**
- **Bring to the attention of US government agencies-IRS, INS, and DHS potential Rule of Law/Criminal wrong doing**

- **Produce a longer, in depth video**

Talking Points

Phase Zero

Define the subject's sphere of influence, advantages and vulnerabilities. Design an effective strategy with tactical and strategic goals.

Findings:

INFLUENCE

The subject enjoys widespread support in congress. There is little or no real opposition to the subject's presence or activities. There are strong indications that the subject has built strong advocacy on the Hill. Likewise, there are strong indications that the subject has built an influence network in a number of key states. The public perception about the subject is generally positive.

ADVANTAGES

The subject is widely viewed as a legitimate political dissident seeking refuge in the United States. The request for extradition has raised the subject's public appraised value. This action has created even a stronger shield for the subject. Consolidation

and centralization of power by the leadership in the subject's home country provides an easy conclusion by the public that he is an old man of God despised by an authoritarian leader in his home country. Any criticism of the subject's acts is immediately interpreted as "political pressure", illegitimate "smear campaign" and unjust attacks on a nice old man. Our asymmetric assessment indicates that an announcement lifting the extradition request by the home country will reduce public appraised value of the subject. This action, if executed will open the space necessary for public scrutiny of the subject's activities. This action will reduce the subject's shield of legitimacy as a political dissident. The Extradition request has made the subject a lot more important than he really is.

VULNERABILITIES

The subject organization operates over 150 U.S. tax payer funded charter schools in 28 states. There are a number of irregularities in the operation of said schools. Legal professionals have shed light on these irregularities in the states of Ohio and Texas. Importing teachers from Turkey presents a number of easily observed irregularities that may prove to be direct violations of U.S. law. Creative/improper financial operations by the subject's organization offer a strong opportunity to unmask the true nature of dangerous, strategic activity under the guise of education. There may be illegal political contributions to political campaigns and nonprofit organizations also pose a potential vulnerability which will be

explored. When the subject's methods are compared to theoretical and historical teachings of Islamic Political activists of Hasan Al Banna, founder of Muslim Brotherhood (1928), Sayed Qutb (1950s-1960s), and deeper in the history, Hasan Sabbah (late 11th century), there are strong indications that the subject is very likely conducting the first phase of Jihad by slowly building a global loyal force to be activated at the right time. Subject lectures provide easily observed indicators of his long term objective. The resemblance of the subject's activities to Ayatollah Khomeini who duped the west in believing that he was a man of the cloth and a benevolent servant of the people serves as a basis to uncover and unmask the subject's ultimate goal of destabilizing his home country and the region.

TACTICAL and STRATEGIC Countermeasures

Devise specific actions to restrict the subject's influence. Exploit the vulnerabilities and reduce the systemic advantages enjoyed by the subject to open space for strategic goal on unmasking the subject's ultimate goal. We have determined that unmasking the subject's true objectives requires unmasking his most visible violations. Tactically, we will search, find and expose the subject's clear violations, influence operation, financial irregularities, illegal contributions, and violations of immigration law. As the legal professionals uncover and engage the subject's activities in the legal arena, we will expose the subject in the public arena. Concurrently with our tactical engagement,

we are producing a short video suitable for quick and wide distribution to key influence providers to the subject including but not limited to members of congress and key law enforcement agencies. Our strategic communication advisors have confirmed our plan that it is essential to have an easy to access, portable (easy to distribute) means of educating the influence providers to the subject. The ultimate aim of the video production is to ask the question:

IS THE SUBJECT ENGAGED IN THE FIRST PHASE OF JIHAD?

PHASE ONE

Operationalize the plan. Harmonize Cyber Research, Field Investigations, Strategic Communications and Congressional outreach.

ACTIONS

- Identified key organizations and individuals in the subject's critical circles.**
- Engaged subject's key supporter in Congress. No major change of position by the supporter. However, feedback suggests that the supporter is alarmed by receiving additional relevant, fact based information and is likely to reduce support for the subject.**
- Briefed senior staff at the Homeland Security Committee with the aim of organizing a hearing on the subject's activities and strategic aims.**

- Have deployed an experienced videography team (brand names Aljazeera, France 24) and a former CNN Anchor to create credible, durable, easy to distribute document in the form of a short video.
- Have interviewed/created effective footage of three victims of the subject's activities in his home country
- Have secured the opportunity for testimony by experts on the subject's masked activities, Sebastian Gorka, Philip Haney, Steve Emerson and other credible witnesses who are authorities on the subject of political Islam, Islamism and Jihadism.
- Our investigation team is engaged in the field within the boundaries of U.S. law.
- Our Cyber research team is also engaged within the boundaries of U.S. law.
- There is a total of 5 professional investigators in the field headed by our principal in charge of investigations.
- Cyber research team is comprised of 3 highly skilled professionals.
- The strategic communications team is actively reviewing and designing a creative tool to convey the masked operation of the subject. We expect the tool to be fully developed and ready for distribution in short order.

The aim of the investigation is to uncover indisputable unlawful activities of the subject and his organization and make a criminal referral.

Operationalize the plan Harmonize Cyber Research, Field Investigations, Strategic Communications and Congressional outreach.

CLOSE OUT OF PHASE 1 ACTIONS AND DISCUSSION

We continue to explore avenues of open source investigation of subject's schools in the US. This is an ambitious list that when completed is expected to help narrow the focus regarding who among subject's school organizers and/or supporters may have possible associations with terrorist organizations such as the Muslim Brotherhood. More importantly, this is the best way to obtain such information (i.e., via financial investigation and/or surveillance, or via other sources).

Our ongoing research has concluded that the schools were the brainchild of the iconic, but reclusive, 75-year old subject, a Sunni Muslim cleric from his home country whose has a reported 3 and 6 million followers who regard him as their spiritual leader. The subject's movement in his home country is known as Hizmet. For the past 17 years, subject has resided on his highly protected country estate in the shadows of the Pocono mountains near Saylorville, Pennsylvania. To his advocates, subject is a pious imam who promotes a tolerant Islamic view stressing the importance of hard work, benevolence and education. To his detractors, he is powerful and crafty politician committed to overthrowing the existing order in his home country. In the US, he was barely known, except to teachers and students who have defected from his schools, concerned parents, and to auditors for Charter schools,

grant providers, public official's and even to investigative agencies such as the FBI, concerned about possible fraud and other criminal violations until the most recent coup attempt in the subject's home country.

It should be noted that the term "subject's name schools" is actually a misnomer and is not used by the schools themselves, although for simplicity, we will use this term hereafter to refer to the general aggregation of these schools. In states where the subject schools have the greatest presence, they use innocent sounding names such as Harmony Schools (Texas), Magnolia Science Academy (California), Horizon Schools (Ohio, Illinois), and Sonoran Science Academy (Arizona).

Many people do not realize that merely being a supporter of subject schools is not a crime. In fact, during the past several years, many members of Congress (bipartisan) have been courted by subject schools, even taking paid trips to subject's home country, to meet with subject adherents extolling the virtues of their schools. Many graduates of these schools, though precise numbers are seldom reported, reportedly move on to college and successful careers. The Bill Gates Foundation has reportedly made a sizeable donation to subject schools, and the Cosmos Foundation appears to be the largest benefactor. President Obama reportedly visited and praised the work being done in the Harmony School in Washington, DC

The creation and operation of subject schools in the US appears to be the result of a broad strategy that involves the use of a sophisticated business model with complex organizational structuring, multiple layers of private and public funding, clever marketing, and aggressive legal representation in the context of an educational system that by its very design, though certainly not intended, is ripe for abuse and exploitation.

- Continue to identify key organizations and individuals in the subject's critical circles and areas of influence.
- Continue to 'flesh' out the details to brief the senior staff at the Homeland Security Committee with the aim of organizing a hearing on the subject's activities and strategic aims with an optimistic timeline of before the Christmas recess, with a realistic timeline of January 2017. Our team is already in the process of preparing relevant material which highlights the subjects
- The videography team (brand names Aljazeera, France 24) and a former CNN Anchor are reviewing and having footage subtitled in English of the three victims of the subject's activities in his home country.
- Our investigation team is engaged in the field within the boundaries of U.S. law.
 - Develop spreadsheet of U.S.-based subject schools to include when opened or, if closed, reasons why.
 - Compile history of criminal or civil suits against subject schools.

Locate and review both pro-subject & anti-subject websites to identify perspectives, biases, and methods used by the latter to support their stated intentions.

- Identify political leaders at the local and national level who are either supporting or criticizing subject schools, and summarize their respective arguments
- Identify journalists reporting on subject schools and explain their unique areas of focus
- Our Cyber research team is also engaged within the boundaries of U.S. law and is conducting baseline monitoring of a multitude of Social and traditional Media sites.

Subject Related Websites:

- gulenmovement.ca
- fgulen.com/en
- gulenmovementca.blogspot.ca
- fethullah-gulen.org
- fethullahgulenforum.org
- gulenmovement.us

Associated Hashtags:

- #GulenMovement
- #HizmetMovement
- #FethullahGulen
- #Hizmet
- #gulenistes
- #NeverForgetJuly15
- #FETO

Associated Social Media Accounts:

- facebook.com/GulenMovementCanada
- plus.google.com/+FethullahGulenEN

Associated You Tube Accounts:

- youtube.com/channel/UCDfIDhRLi7M32qylaRImQtQ
- youtube.com/channel/UCykpGY1yIAF6rP1zuWTJC2A

- [youtube.com/channel/UC-5_J80Fi7lr92C8h8mmevg](https://www.youtube.com/channel/UC-5_J80Fi7lr92C8h8mmevg)

He's in the News:

- dailysabah.com/war-on-terror/2016/10/12/3-gulen-linked-charter-schools-in-california-face-closure
- latimes.com/local/lanow/la-me-edu-magnolia-charter-ties-to-gulen-20160829-snap-story.html
- dailysabah.com/war-on-terror/2016/10/10/us-must-show-turkey-empathy-over-gulens-extradition-justice-minister
- dailysabah.com/war-on-terror/2016/10/10/iraqi-kurdish-administration-seizes-schools-run-by-gulenists
- reuters.com/article/us-un-assembly-turkey-erdogan-idUSKCN11Q2K5
- france24.com/en/20160916-turkey-coup-fethullah-gulen-extradition-how-will-us-respond
- dailysabah.com/war-on-terror/2016/09/15/top-eu-officials-admit-regret-over-failure-to-grasp-feto-threat
- dailysabah.com/war-on-terror/2016/09/09/pkk-terrorists-informed-about-gulenist-coup-attempt-in-advance
- shaber3.com/inanmadiniz-aldattiniz-sayin-bozdog-haber/1273365
- lehighvalleylive.com/news/index.ssf/2016/07/rare_look_at_exiled_turkish_cl.html

Charter Schools:

- Website:
- charterschoolscandals.blogspot.com/p/list-of-us-gulen-schools.html
- Last Updated 12/7/2015

60 minutes:

- [youtube.com/watch?v=ktl-IDnM7I](https://www.youtube.com/watch?v=ktl-IDnM7I)

Ties to Clinton:

- dailycaller.com/2016/07/13/new-ties-emerge-between-clinton-and-mysterious-islamic-cleric
- **The strategic communications team has developed a very complex approach to their efforts which include a Strategic Objectives; Target Audiences, and Activities and Timing.**

They are actively designing a creative visual tool to convey the masked operation of the subject. A copy of the initial draft is done and is attached. We expect the visual tool to be fully developed and ready for distribution in short order. The draft "wireframe" version of the board and a citation document which provides public record of the "accusations" within the board. We welcome any and all feedback and will continue working to build out a more "produced" version with graphics, etc.

· Active engagement of media outlets.

- **Drudge Report and have followed up with several different articles and angles. (Clinton foundation connections, etc.) Drudge Report has an unprecedented active readership and even if they don't use this development, they are confident the outreach this week will serve as a strong foundation for future coverage.**
- **Politico Morning Education - We have also compiled this week's coverage of both Ohio and California (LA TIMES) coverage in hopes of inclusion in tomorrow (Thursday) morning's daily email. Politico is a leading policy outlet and the "Morning Education" email is a subscription based news aggregator received by top education policy influencers in DC and the around the country. See attached PowerPoint slide with a screen shot of this coverage.**

· Teachers Unions - Teachers unions are a ripe ally in this project given their automatic resistance to all things related to charter schools. While our most impactful messaging might be on the homeland security front, the education/teachers angle could be a valuable flank that

appeals to Democratic policymakers, whereas Homeland Security might appeal more to Republicans. As such initiated contact today with:

- **Gene Bruskin, formerly of the American Federation of Teachers and author of "The Story Behind the subject Charter Schools and Their Reclusive Founder".** Have requested a phone meeting to compare notes and gauge his interest in participating in and assisting with the organization of an effort to coalesce issue experts in his field to persuade policy makers to take action. Updates to follow.
- **Policymaker Fact Sheet - Producing a briefing document ahead of policymaker meetings. An initial draft is complete and attached.**
- **High Ranking State Level Elected Official - Engaged in conversation with a high ranking elected official in a state with multiple subject Charter Schools. He is "extremely interested" and we are briefing him soon, but wish to keep this outreach confidential at the moment per his wishes.**

GULEN BRIEFING SHEET

Background:

In the wake of the recent attempted coup in Turkey, new focus and scrutiny has been applied to Fethullah Gulen, a Muslim cleric living in exile in rural Pennsylvania. The Turkish government considers the man a terrorist and has petitioned the U.S. government for his extradition. Gulen has millions of global followers, known informally as the Hizmet, meaning service, or the "Gulen Movement". The Movement's primary source of funding is its network of schools around the world. Over 150 of these are US Charter Schools that have used taxpayer dollars to expand their operations into 26 states.

Fethullah Gulen is a radical:

- In his sermons in the 1990s, Gulen urged his followers to infiltrate the Turkish military, media, and government and wait for the right moment to rise up, ordering them to “move within the arteries of the system, without anyone noticing your existence, until you reach all the power centers.” Gulen promised that doing so would provide “*the guarantee of our Islamic future.*”
- Despite his seeming moderate position, at times, Fethullah Gulen has called the United States his “*merciless enemy.*” Additionally, he has claimed that the Jews are responsible for ideas like Communism that have purposefully steered the world towards cataclysm.

Gulen Controls a network of corrupt US Charter Schools:

- Gulen-associated schools participate in a process called “closed-loop leasing,” where the charter schools use taxpayer money to pay excessive rent to a Gulen-associated real estate corporation. The real estate corporation funnels those profits back to Gulen or uses the funds to start more schools.
- Gulen-associated schools exploit the H-1B visa program, which are to be used when there are no qualified American workers, to bring Turks to the United States as teachers. In 2009, the Gulen schools received government approval for 684 visas, over 200 more than Google. Parents and other teachers have complained that the Turkish educators are clearly unqualified.
- Gulen-associated schools have been investigated by authorities and journalists in the states of Ohio, California, Texas, Louisiana, Illinois, Massachusetts, Virginia, Pennsylvania and Georgia, as well as by the FBI, for a litany of offenses, including the misappropriation of funds, the falsification of standardized tests, immigration fraud, and bid-rigging.

Gulen is Politically Powerful and Influential in the US:

- In 2002, Fethullah Gulen applied for permanent residence in the United States, claiming that he was an “exceptional individual” who deserved special consideration. His application was denied, but a few years later, Gulen won his appeal with the help of letters from George Fidas, a former director of outreach for the C.I.A., Morton Abramowitz, a former American ambassador and Graham Fuller, a former senior C.I.A. official.
- This was a surprising development after an American diplomat in Turkey had cabled to Washington about Gulen’s sharply radical past as an Islamic preacher, the cult-like obedience that Gulen demands, and his involvement in the affairs of almost 100 countries.
- The Gulen movement has illegally financed Congressional travel abroad and provided hundreds of thousands of dollars of improper campaign donations to congressional and presidential candidates.

- Gulen's chief liaison to New York, Recep Ozkan, donated between \$500,001 and \$1,000,000 to the Clinton Global Initiative.

Responsible for the attempted Coup in Turkey:

- Western diplomats have called Erdogan's accusations of Gulenist involvement "compelling," saying that "Gülenists played a credible role in [the coup]."
- General Hulusi Akar, the highest ranking member of the Turkish armed forces and a captive during the July coup, has claimed that his abductors offered to put him in touch with their opinion leader, Fethullah Gulen.
- Several plotters have released statements identifying themselves as loyal Fethullah Gulen and claimed that the coup was in response to an imminent crackdown on Gulenists in the Turkish military.

Statements by Senior US officials:

President Obama: President Barack Obama and Turkish President Tayyip Erdogan discussed the status of U.S.-based cleric Fethullah Gulen, blamed by Turkish authorities for masterminding a recent failed coup, during a call on Tuesday, the White House said.

The Turkish government has filed material in electronic form about Gulen with the U.S. government, which has been waiting for a formal extradition request, White House spokesman Josh Earnest said.

U.S. officials have said Turkey must provide proof that Gulen was involved in the coup attempt. Any extradition request from Turkey, once submitted, would be evaluated under the terms of a treaty between the two countries, Earnest said.

Obama offered U.S. assistance for Ankara's investigation into the attempted coup and pressed Erdogan to proceed according to the democratic principles outlined in Turkey's constitution, Earnest said.

"The principles of democracy should be adhered to even as a thorough investigation is conducted," he said.

The U.S. State Department said it was still in the process of analyzing the documents submitted by Turkey and could not characterize them as an extradition request for Gulen. Source: <http://www.reuters.com/article/us-turkey-security-usa-extradition-idUSKCN0ZZ23E7iI=0>

Anthony Blinken: Question: We see that the U.S. government is taking Turkey's request regarding the return of Fethullah Gulen seriously. Do you agree with Ankara that this topic may damage Turkish-American relations?

Deputy Secretary Blinken: We are determined to do everything we can to help Turkey as it pursues its investigations of those responsible for the attempted coup. And with regards specifically to the case of Mr. Gulen, we've had an exchange of experts visiting both Turkey and the U.S. – legal experts, so that Turkey fully understands the legal process that's involved. I just want to be very clear, this is not a political question at all for the United States – it's simply a legal question. We have laws and requirements when it comes to the extradition of any person from a country with whom we have an extradition treaty and we need to work through those legal requirements. But we've had very good exchanges with Turkey on this question and we're working through the information that's been provided. Source: <https://tr.usembassy.gov/deputy-secretary-antony-blinkens-interview-ntvs-ahmet-yesiltepe/>

Ambassador James Jeffrey: U.S. Ankara Ambassador James Jeffrey, on Dec. 4, 2009, briefed in regards to Gülen's application for Permanent Residence status in the U.S., with a background about Gülen and his movement. Saying that Gülen faced charges in Turkey of plotting to overthrow the state, Jeffrey mentioned a sermon in 1986, where Gülen is heard declaring that "our friends, who have positions in legislative and administrative bodies, should learn its details and be vigilant all the time so they can transform it and be more fruitful on behalf of Islam in order to carry out a nationwide restoration." Holding a Green Card now and living in Pennsylvania's Pocono Mountains, Fethullah Gülen was doubted to have infiltrated the TNP, and they "have found no one who disputes it."

Additionally, Jeffrey found out that the "TNP applicants who stay at Gülenist pensions are provided with the answers in advance of the TNP entrance exam." Apart from that, even more subtly, "Gülen's lack of transparency creates doubt about his motives and leads to suspicions about what lies ahead," Jeffrey says. As for the aspects of concern in the allegations that the U.S. government is somehow behind the Gülen Movement, Jeffrey concluded that "the U.S. is not 'sheltering' Mr. Gülen and his presence in the U.S. is not based on any political decision." Source: <http://www.dailysabah.com/war-on-terror/2016/08/02/a-decade-of-the-gulen-movement-on-wikileaks-more-than-meets-the-eye>

Stuart Smith: The Gülenists' penetration of the National Police (TNP), media outlets and their record of going after anyone who criticizes Gülen were among the items on the annual agenda of the U.S. Embassy in Ankara in 2005, when a decision by U.S. immigration authorities for the first time denied him the right to travel outside of the country. Stuart Smith, the U.S. vice consul general of the

Intelligence Department in Ankara, reported that three ranking TNP asked for a meeting with the Istanbul legate as a means of asking whether the "FBI could provide some sort of clean bill of health" for Fethullah Gülen. Upon such a request, Smith juxtaposes some concerns about the Gülen Movement's actions: "Severe pressure on businessmen to continue to give money to support Gülenist schools or other activities," "using their school networks to cherry-pick students they think are susceptible to being molded as proselytizers and to indoctrinate boarding students," "the cult-like obedience and conformity" the movement insists on its substructures. Source: <http://www.dailysabah.com/war-on-terror/2016/08/02/a-decade-of-the-gulen-movement-on-wikileaks-more-than-meets-the-eye>

Deborah K. Jones: A cable, with a more suspicious and questioning tone, classified by Consul General Deborah K. Jones on May 23, 2006, clarifies that U.S. authorities in Turkey started to count Gülen Movement's institutions and academies in the U.S., Central Asia, Caucasus, Russia, the Balkans, Africa, South East Asia, the Far East, the Middle East and Europe. Furthermore, the cable shows that a profile recognition for those traveling to the U.S., particularly with the aim of visiting Fethullah Gülen, was also actively carried out by Consular officers. Compiling a list of Gülenist organizations as well as periodical meetings to discuss trends within the Gülenist applicant pool let Consular officers in Ankara and Istanbul notice "what appears to a purposeful 'shifting' of applicant profiles appearing for visa interviews in what may be an effort by Gülenists to identify 'successful' profiles." After giving the general features of applicants and visitors (the young exchange visitor; the married middle-aged male with no English and traveling alone; the middle-school-aged English student; the graduate student going for English), the Consul General Jones claims that "evasiveness of Gülenist applicants leaves Consular officers uneasy" although there seems to be "a benign humanitarian movement" on the surface. Source: <http://www.dailysabah.com/war-on-terror/2016/08/02/a-decade-of-the-gulen-movement-on-wikileaks-more-than-meets-the-eye>

BREIFING ON GULEN RELATED CHARTER SCHOOLS IN TEXAS

Current Situation

There are approximately 46 Gulen-affiliated charter schools serving 31,000 students in the state of Texas. Chairman McCaul has two schools within his district.

In May, Amsterdam & Partners filed a 32-page complaint alleging that Harmony Public Schools, the state's largest charter school network, hires under-qualified Turkish teachers and steers business to companies run by Turkish nationals, including some former Harmony employees.

Amsterdam & Partners additionally alleged that Harmony Schools are guilty of funneling money to Fethullah Gulen via tithes from teachers, that Harmony schools have misused bond money from the state of Texas to operate schools in Arkansas, and that Harmony abuses the H-1B visa program to bring in Turkish workers as teachers and then shuffle them around the United States in various positions.

The Texas Education Agency had found the allegations credible and were investigating the complaint. However, on October 17, the TEA cleared Harmony of allegations that it illegally steered business to vendors with ties to Harmony and the nation of Turkey. But, the TEA only dismissed several other claims that involved teacher hiring, special education and other matters, saying it was its jurisdiction.

In response, Amsterdam & Partners has criticized the TEA for only investigating two of the ten allegations, saying "this cursory inquiry not only ignored the majority of the issues raised in the complaint, but also failed to look beyond the registered agents of the contracting companies without even considering who the beneficiaries are." Amsterdam continued, "Knowing the Gülenists, they will undoubtedly attempt to portray this whitewash as a victory. But the fact is that there are many areas that TEA did not address, and we intend to request other state agencies and public officials to scrutinize Harmony's activity."

Inadequate Investigation

Among the issues in the complaint that were left aside by TEA include evidence of discrimination in hiring, pay, and promotion favoring Turkish males, preference for related Turkish vendors in major contracts, discrimination against English Language learners and Students with Disabilities, abuse of the H-1B visa program to bring in underqualified Turkish nationals for teaching and leadership positions, misuse of federal program funding for low socioeconomic students and students with special needs, and systematic overcharging of leases to Harmony schools by Harmony's private real estate arm to siphon over \$18 million of public funds out of the schools.

Despite finding that Harmony had paid over \$18.7 million dollars to Turkish owned vendors in the last two years, TEA conducted no analysis to determine whether these vendors had illegal relationships to Harmony's leadership, as alleged in the complaint. This deserves more investigation because it is known that some of these local funds Harmony receives come from questionable sources. For example, Harmony received \$175,000 from Gulen-affiliated schools in Oklahoma that in a recent audit by the Oklahoma State Auditor were considered an improper use of state funds.

Past Improprieties

This is not the first time that Harmony Public Schools has been accused of impropriety.

In 2011, *The New York Times* found that Harmony gives the vast majority of its construction and renovation contracts to Turkish-owned companies, even when other firms had offered to do the job for less money. *The Times* also noted that Harmony applies for hundreds of H-1B visas, claiming that there are no skilled Americans qualified to teach children. Texas has a population of almost 30,000,000 people.

In 2014, Harmony Public Schools settled a federal civil rights complaint that involved a female American teacher who made less than her male colleagues from Turkey, including those with less experience.

Also in 2014, Harmony reached an agreement with the U.S. Department of Education over how it teaches children who are learning English or have disabilities. A federal investigation found that those students were "significantly underrepresented" at Harmony, and that Harmony didn't ensure those students received the extra help they needed.



To: Flynn Intel Group
From: Sphere Consulting
Date: October 18, 2016
RE: Charter Schools and the Department of Education

The Charter Schools Program (CSP)

The Department of Education has a Charter Schools Program that disburses discretionary grants to “create new high-quality public charter schools, as well as to disseminate information about ones with a proven track record.” Federal funds are also available to replicate and expand successful schools; help charter schools find suitable facilities; reward high-quality charter schools that form exemplary collaborations with the non-chartered public school sector; and invest in national activities and initiatives that support charter schools.

The CSP is part of the Department of Education’s Office of Innovation and Improvement (OII). The OII has a self-state mission “to accelerate the pace at which the U.S. identifies, develops, and scales solutions to education’s most important or persistent challenges,” which it accomplishes through strategic investments and discretionary grant programs.

CSP Grants

The CSP disburses grants and funding in about a half dozen ways. These are listed with their FY 2016 funding levels.

1. The Secretary of Education awards grants to State Educational Agencies (SEAs) to enable them to conduct charter school programs through sub-grants at the state level.
 - a. \$177,209,326 for new awards and \$11,548,828 for continuation awards
2. The Secretary of Education awards grants for “Planning, Program Design, And Initial Implementation Grant” directly to programs that do not have a State Educational Agency or that do not have a State Educational Agency with an approved application for CSP grants.
 - a. \$3,325,107 for new awards and \$2,784,727 for continuing awards
3. The Secretary of Education awards grants for “dissemination” (including assisting the foundation of new charter schools, developing partnership, producing curriculum materials, and conducting evaluations) directly to programs that do not

have a State Educational Agency or that do not have a State Educational Agency with an approved application for CSP grants.

- a. This grant has not been awarded or continued since 2014.
4. The CSP awards grants to charter schools or non-profit charter management programs to expand enrollment of high-achieving programs by substantially increasing the number of available seats per school, or to open one or more new charter schools based on the model for which the eligible applicant has presented evidence of success.
 - a. \$65,759,488 for new awards and \$32,316,646 continuing awards
5. The CSP awards funds that are used to match programs funded with nonfederal dollars that make payments, on a per-pupil basis, to provide charter schools with facilities financing. The funds scale down annually and are phased out after 5 years.
 - a. Funding data is not available for 2016. In 2015, \$9,000,000 was disbursed as a continuation of previous grants.
6. The CSP awards grants that support efforts by eligible entities to improve the quality of charter schools by providing technical assistance and other types of support on issues of national significance and scope.
 - a. In 2015, provided \$4,123,072 in new awards.
7. The CSP provides grants to eligible entities to permit them to enhance the credit of charter schools so that the charter schools can access private-sector and other non-Federal capital in order to acquire, construct, and renovate facilities at a reasonable cost.
 - a. In 2015, provided \$14,069,608

Gulen Schools Receiving Federal Funding

School	Chartering Org.	Location	Year	Grant Details
Harmony Schools*	Cosmos Foundation	Houston, TX	2011	3 years \$4,940,897
Horizon Science Academy-Southwest	Concept Schools	Chicago, IL	2015	3 years \$337,138
Chesapeake Math & IT Academy-South	Chesapeake Lighthouse Foundation	Hanover, MD	2014	3 years \$617,120
Thomas Edison Energy Smart	Apple Educational Services	Somerset, NJ	2010	3 years \$530,507
Triad Math & Science Academy	Washington Educational Foundation	Greensboro, NC	2010	1 year \$530,432
Triad Math & Science Academy	Washington Educational Foundation	Greensboro, NC	2012	2 years \$751,145
Noble Schools*	Concept Schools	Chicago, IL	2014	3 years \$507,209

Young Scholars of Western Pennsylvania	Apple Educational Services	Pittsburgh, PA	2012	2 years \$301,500
Vision Academy	Apple Educational Services	Lansdowne, PA	2016	3 years \$783,104

*Grant was awarded to a network of schools, rather than an individual institution

<https://innovation.ed.gov/what-we-do/charter-schools/credit-enhancement-for-charter-school-facilities-program/awards/>

FIND OUT WHAT BUILDERS BUILD GULEN SCHOOLS THEN CROSS REFERENCE

<https://innovation.ed.gov/what-we-do/charter-schools/charter-school-program-state-educational-agencies-sea/awards/>

WHEN THERE IS AN APPLICATION PDF, FIGURE OUT IF THE STATE HAS DISBURSED FEDERAL FUNDS



To: Flynn Intel Group
From: Sphere Consulting
Date: October 18, 2016
RE: Charter Schools and the IRS

Overview

Charter schools are usually classified as 501(c)(3) organizations and therefore avoid federal income taxes and, in some instances, state income taxes as well. To maintain 501(c)(3) status, charter schools must demonstrate that they are not operated by a for-profit business. However, a charter school can maintain 501(c)(3) status and contract a for-profit management company for its operation, provided that the school demonstrates that it is organized and operated for exclusively charitable purposes and not for the benefit of private management companies and/or for service providers.

When examining the 501(c)(3) status of charter schools, the IRS assesses whether the: (1) charter school board remains in control and continues to exercise its fiduciary responsibility to the school; and (2) board delegates its responsibility and ultimate accountability for the school's operations to a for-profit management company. Examples of charter schools losing 501(c)(3) status are sparse.

The IRS has conveniently provided a list of factors used in its assessment.

IRS Guidelines for Non-Profit Assessment

1. Is the school governed by an independent Board of Directors?

“A board appointed or dominated by a comprehensive management company raises questions as to whether the school will be operated for the benefit of the management company. The examiner should determine whether a structurally independent board is involved in active oversight of the school's operations or whether the board has delegated its duties and responsibilities to the management company.”

2. Does the Board of Directors actively oversee the school?

“A Board must show that it is not a front for the benefit of the management company.” To demonstrate active oversight, a Board has: (1) regular meetings,

with recorded minutes, more often than once or twice a year; (2) a conflict of interest policy requiring members to disclose all financial interests they have in any service provided to the school, even if specific policies are left to the discretion of the school's bylaws; (3) ultimate responsibility for meeting the terms of its charter by setting and approving broad school policies such as the budget, curriculum, admissions procedures, student conduct, school calendars, and dispute resolution procedures; and (4) fiscal responsibility and takes appropriate action to ensure the fiscal health of the school.

3. *Are contracts negotiated at arms' length and for the benefit of the school?*

"A charter school must show that contracts, especially comprehensive management contracts, have been negotiated at arm's length and are for the benefit of the school rather than the service provider. Boilerplate contracts may be an indicium that the terms of the contract were not the subject of negotiations between independent parties. Representation of both the school and the management by the same attorney is also an indication of the absence of arm's length negotiations."

4. *Are the terms of contracts consistent with the charter school's expressed purposes?*

Some contract terms, may result in a finding that the school is operated for the benefit of the management and preclude exemption. These are the IRS's areas of concern: (1) the length of a contract should balance a management company's long-term needs with the school's flexibility to meet its fiduciary responsibility; (2) Board policies should not be contracted as they are necessary to define a school's identity; (3) service agreements should detail the responsibilities of both the management company and the school; (4) personnel contracts with management companies should not have non-compete clauses as these benefit the management company by preventing a school from retaining teachers should a separation between school and management organization; (5) management fees should be reasonable and commensurate with services provided; (6) a service contract should specify the provisions for termination and the procedure for evaluating when the terms of the contract are in default.

5. *Does a contractual provision require the name of the school to be associated with the management organization?*

"In many cases, contractual provisions require a charter school to attach the management's name to the school (i.e., Company X Charter School or Charter School, a Company X affiliate.) "Name branding" has no clear exempt purpose. It links management companies to exempt schools and allows the company to draw goodwill from the relationship. It allows the management companies to build name recognition without additional expense. It also places a contractual burden on the charter schools, making it more difficult for the school to terminate the

relationship with the management. A "name branding" requirement may be an indicator of private benefit depending upon the facts and circumstances."

6. *Are ancillary services the result of arm's length negotiation or are they adhesion contracts with a captive school board?*

On the Charter School Site of Research:

Attached is the broad overview of Horizon Science Academies and their online presence. We are continuing to build out this network and persons of interest within it; however, we haven't found anything significant yet related to this investigation.

Of interest, however, is that of all the "umbrella"-type organizations related to the Ohio Charter Schools, Horizon seems to be the only one with a significant online presence. Noble, Concept and New Plan Learning have very little to no online presence that has been found thus far. We will keep digging on them, but I think it's very interesting and worth running down the "why" behind this as we go.

U.S. Department of Justice
Washington, DC 20530

OMB No. 1124-0001; Expires April 30, 2017

Registration Statement
Pursuant to the Foreign Agents Registration Act of
1938, as amended

INSTRUCTION SHEET-READ CAREFULLY

1. *Use.* All persons required to register under this Act shall use this form in submitting the information required by Section 2(a).
2. *Read Act and Rules.* Registrant should carefully read the Act and the Rules thereunder before completing this form.
3. *Answer.* Unless otherwise specifically instructed in this form, a registrant shall answer every item on this form. Whenever the item is inapplicable or the appropriate response to an item is "none", an express statement to that effect shall be made.
4. *Attachments.* Inserts and riders of less than full page size shall not be used. Whenever insufficient space is provided for response to any item, reference shall be made in such space to a full insert page or pages on which the item number and inquiry shall be restated and a complete answer given.
5. *Filing.* The completed statement, including all exhibits, shall be filed in electronic form with the Registration Unit, Counterespionage Section, National Security Division, U.S. Department of Justice at <http://www.fara.gov>. The statement must be filed in accordance with 28 U.S.C. § 1746. A copy should be retained by the registrant.
6. *Filing Fee.* The filing of this document requires the payment of a filing fee for each listed foreign principal as set forth in Rule 5(d)(1), 28 C.F.R. § 5.5(d)(1).
7. *Privacy Act Statement.* The filing of this document is required for the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide the information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: <http://www.fara.gov>. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: <http://www.fara.gov>.
8. *Public Reporting Burden.* Public reporting burden for this collection of information is estimated to average 1.375 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterespionage Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Note: Omit this instruction sheet when filing this Statement.

FORM NSD-1
Revised 03/14

MTF-EDVA00032

U.S. Department of Justice
Washington, DC 20530

OMB No. 1124-0001; Expires April 30, 2017

Registration Statement
Pursuant to the Foreign Agents Registration Act of
1938, as amended

I-REGISTRANT

1. Name of Registrant

Flynn Intel Group, Inc.

2. Registration No. (To Be Assigned By the FARA Registration Unit)

3. Principal Business Address

44 Canal Center Plaza, Alexandria VA 22314

4. If the registrant is an individual, furnish the following information:

(a) Residence address(es)

(b) Other business address(es), if any

(c) Nationality

(d) Year of birth

(e) Present citizenship

(f) If present citizenship not acquired by birth, state when, where and how acquired

(g) Occupation

5. If the registrant is not an individual, furnish the following information:

(a) Type of organization: Committee ☐ Association ☐ Partnership ☐ Voluntary group ☐
Corporation ☒ Other (specify) _____

(b) Date and place of organization Delaware Secretary of State, June 12, 2015

(c) Address of principal office 44 Canal Center Plaza, Alexandria VA 22314

(d) Name of person in charge Michael T. Flynn and Bijan Kian

(e) Locations of branch or local offices N/A

(f) If a membership organization, give number of members N/A

FORM NSD-1
Revised 03/14

MTF-EDVA00033

(PAGE 2)

(g) List all partners, officers, directors or persons performing the functions of an officer or director of the registrant.

Name	Residence Address(es)	Position	Nationality
Michael T. Flynn	available upon request	Chairman and CEO	US
Bijan Kian		Vice-Chairman and Director	US
Philip Oakley		President	US

(h) Which of the above named persons renders services directly in furtherance of the interests of any of the foreign principals?

Michael T. Flynn, Bijan Kian

(i) Describe the nature of the registrant's regular business or activity.

Flynn Intel Group is a consulting firm that provided intelligence research and advisory services.

(j) Give a complete statement of the ownership and control of the registrant.

Ownership as of November 31, 2016 was as follows:

Michael T. Flynn (350,000 shares), Bijan Kian (300,000 shares), Philip Oakley (250,000 shares), Dr. Payman Arabshahi (5,000 shares), Darkshore LLC (1,000 shares). The Corporation acts pursuant to its By-Laws pursuant to which the Board of Directors governs the organization. Directors include Michael T. Flynn, Bijan Kian and Philip Oakley.

6. List all employees who render services to the registrant directly in furtherance of the interests of any of the foreign principals in other than a clerical, secretarial, or in a related or similar capacity.

Name	Residence Address(es)	Nature of Services
Michael T. Flynn	available upon request	Director, consulting
Bijan Kian		Director, consulting

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II--FOREIGN PRINCIPAL7. List every foreign principal¹ for whom the registrant is acting or has agreed to act.

Foreign Principal

Inovo B.V.

Principal Address(es)

47 Adireaanstraat, 3581 SC Utrecht, The Netherlands

III--ACTIVITIES8. In addition to the activities described in any Exhibit B to this statement, will you engage or are you engaging now in activity on your own behalf which benefits any or all of your foreign principals? Yes ☒ No ☐

If yes, describe fully.

Since this is filed retrospective to activity under this engagement, we note that during the course of the engagement and thereafter, Flynn Intel Group officials (particularly Michael T. Flynn, in his capacity as a public figure separate from Flynn Intel Group) frequently wrote, spoke or provided Interviews relating to national security. Although not undertaken at the direction of any foreign principal including but not limited to Inovo, it is possible that such activities may have an indirect benefit to Inovo and its clients on whose behalf Inovo engaged Flynn Intel Group or other foreign principals unrelated to this engagement.

IV--FINANCIAL INFORMATION**9. (a) RECEIPTS-MONIES**

During the period beginning 60 days prior to the date of your obligation to register² to the time of filing this statement, did you receive from any foreign principal named in Item 7 any contribution, income, or money either as compensation or for disbursement or otherwise? Yes ☐ No ☒

If yes, set forth below in the required detail and separately for each such foreign principal an account of such monies.³

Foreign Principal	Date Received	Purpose	Amount
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Total

¹ The term "foreign principal," as defined in Section 1(b) of the Act, includes a foreign government, foreign political party, foreign organization, foreign individual and, for the purpose of registration, an organization or an individual any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual.

² An agent must register within ten days of becoming an agent, and before acting as such.

³ A registrant is required to file an Exhibit D if he collects or receives contributions, loans, moneys, or other things of value for a foreign principal, as part of a fundraising campaign. There is no printed form for this exhibit. (See Rule 201(e), 28 C.F.R. § 5.201(e)).

MTF-EDVA00035

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(b) RECEIPTS-THINGS OF VALUE

During the period beginning 60 days prior to the date of your obligation to register⁴ to the time of filing this statement, did you receive from any foreign principal named in Item 7 anything of value⁵ other than money, either as compensation, or for disbursement, or otherwise? Yes ☐ No ☒

If yes, furnish the following information:

Foreign Principal	Date Received	Thing of Value	Purpose
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10. (a) DISBURSEMENT-MONIES

During the period beginning 60 days prior to the date of your obligation to register⁶ to the time of filing this statement, did you spend or disburse any money in furtherance of or in connection with your activities on behalf of any foreign principal named in Item 7? Yes ☐ No ☒

If yes, set forth below in the required detail and separately for each such foreign principal named including monies transmitted, if any, to each foreign principal.

Date	To Whom	Purpose	Amount
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(b) DISBURSEMENTS-THINGS OF VALUE

During the period beginning 60 days prior to the date of your obligation to register⁷ to the time of filing this statement, did you dispose of any thing of value⁸ other than money in furtherance of or in connection with your activities on behalf of any foreign principal named in Item 7? Yes ☐ No ☒

If yes, furnish the following information:

Date	Recipient	Foreign Principal	Thing of Value	Purpose
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(c) DISBURSEMENTS-POLITICAL CONTRIBUTIONS

During the period beginning 60 days prior to the date of your obligation to register⁹ to the time of filing this statement, did you, the registrant, or any short form registrant, make any contribution of money or other thing of value from your own funds and on your own behalf in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office? Yes ☐ No ☒

If yes, furnish the following information:

Date	Amount or Thing of Value	Political Organization or Candidate	Location of Event
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4, 6, 7 and 9 See Footnote 2, on page 3.

5 and 8 Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks", and the like.

V—INFORMATIONAL MATERIALS¹⁰

11. Will the activities of the registrant on behalf of any foreign principal include the preparation or dissemination of informational materials? Yes ☒ No ☐

IF YES, RESPOND TO THE REMAINING ITEMS IN THIS SECTION V.

12. Identify each such foreign principal.
Inovo B.V.

13. Has a budget been established or specified sum of money allocated to finance your activities in preparing or disseminating informational materials? Yes ☐ No ☒

If yes, identify each such foreign principal, specify amount and for what period of time.

See attachment

14. Will any public relations firms or publicity agents participate in the preparation or dissemination of such informational materials? Yes ☒ No ☐

If yes, furnish the names and addresses of such persons or firms.

See attachment

15. Activities in preparing or disseminating informational materials will include the use of the following:

- ☐ Radio or TV broadcasts ☐ Magazine or newspaper ☐ Motion picture films ☐ Letters or telegrams
☐ Advertising campaigns ☐ Press releases ☐ Pamphlets or other publications ☐ Lectures or speeches
☐ Other (specify) See attachment

Electronic Communications

- ☐ Email
☐ Website URL(s): _____
☐ Social media website URL(s): _____
☐ Other (specify) See attachment

16. Informational materials will be disseminated among the following groups:

- ☐ Public officials ☐ Civic groups or associations
☐ Legislators ☐ Libraries
☐ Government agencies ☐ Educational groups
☐ Newspapers ☐ Nationality groups
☐ Editors ☐ Other (specify) See attachment

17. Indicate language to be used in the informational materials:

- ☒ English ☐ Other (specify) _____

¹⁰ The term informational materials includes any oral, visual, graphic, written, or pictorial information or matter of any kind, including that published by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or any means or instrumentality of interstate or foreign commerce or otherwise. Informational materials disseminated by an agent of a foreign principal as part of an activity in itself exempt from registration, or an activity which by itself would not require registration, need not be filed pursuant to Section 4(b) of the Act.

VI-EXHIBITS AND ATTACHMENTS

18. (a) The following described exhibits shall be filed with an initial registration statement:

Exhibit A- This exhibit, which is filed on Form NSD-3, sets forth the information required to be disclosed concerning each foreign principal named in Item 7.

Exhibit B- This exhibit, which is filed on Form NSD-4, sets forth the information concerning the agreement or understanding between the registrant and the foreign principal.

(b) An Exhibit C shall be filed when applicable. This exhibit, for which no printed form is provided, consists of a true copy of the charter, articles of incorporation, association, constitution, and bylaws of a registrant that is an organization. A waiver of the requirement to file an Exhibit C may be obtained for good cause shown upon written application to the Assistant Attorney General, National Security Division, U.S. Department of Justice, Washington, DC 20530. (See Rule 201(c) and (d)).

(c) An Exhibit D shall be filed when applicable. This exhibit, for which no printed form is provided, sets forth an account of money collected or received as a result of a fundraising campaign and transmitted for a foreign principal. (See Rule 201 (e)).

VII-EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swear(s) or affirm(s) under penalty of perjury that he/she has (they have) read the information set forth in this registration statement and the attached exhibits and that he/she is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her (their) knowledge and belief, except that the undersigned make(s) no representation as to truth or accuracy of the information contained in the attached Short Form Registration Statement(s), if any, insofar as such information is not within his/her (their) personal knowledge.

(Date of signature)

(Print or type name under each signature or provide electronic signature¹¹)

¹¹ This statement shall be signed by the individual agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions, if the registrant is an organization, except that the organization can, by power of attorney, authorize one or more individuals to execute this statement on its behalf.

*Flynn Intel Group, Inc., Supplemental Statement***Attachment***15, 16. Activities*

Note: In September 2016, the Flynn Intel Group filed a registration under the Lobbying Disclosure Act for its representation of Inovo BV ("Inovo"). Upon further review, and to eliminate any potential doubt, the Flynn Intel Group is electing to file a registration and supplemental statement under the Foreign Agents Registration Act in lieu of its prior LDA registration. Although the Flynn Intel Group was engaged by a private firm, Inovo BV, and not by any foreign government, Flynn Intel Group's work for Inovo could be construed to have principally benefitted the Republic of Turkey. The Department's regulations provide that the LDA exemption from FARA registration is not available if a foreign government or political party is the principal beneficiary. *See* 28 C.F.R. § 5.307. This retroactive supplemental statement is being filed after the Flynn Intel Group began to close its operations in November 2016, and the supplemental statement is therefore based on information that is currently available to Flynn Intel Group, to the best of its knowledge, after undertaking due diligence with the assistance of counsel.

In August 2014, Flynn Intel Group entered into a contract with Inovo, a consulting firm based in the Netherlands. The contract provided that Flynn Intel Group would perform research, engage a public relations firm and a filming and production crew to potentially distribute the results of its research, and hold weekly calls with the client to discuss progress on the project. Flynn Intel Group understood the engagement to be focused on improving U.S. business organizations' confidence regarding doing business in Turkey, particularly with respect to the stability of Turkey and its suitability as a venue for investment and commercial activity. Inovo has represented through its counsel that no part of the fees paid to Flynn Intel Group by Inovo was provided by any foreign government.

Under the contract, Flynn Intel Group conducted open-source research for Inovo and at Inovo's direction. The research, which was conducted by independent contractors retained for this purpose, focused on Mr. Fethullah Gülen and charter schools in the United States that are associated with, or allegedly associated with, Mr. Gülen. The results of Flynn Intel Group's research were provided to Inovo and Mr. Alptekin, and to Sphere Consulting, a public relations firm engaged by Flynn Intel Group, at the direction of Inovo. Flynn Intel Group and the public relations firm developed various materials and documents related to this research for potential dissemination. Because the project was terminated early, the full scope of the contract was not performed, and to the best of Flynn Intel Group's knowledge, none of the research materials prepared by the Flynn Intel Group were ever disseminated to third parties.

In early September 2016, Flynn Intel Group was invited by Mr. Alptekin to meet with a group of government officials from Turkey for the purpose of understanding better the political climate in Turkey at the time as background for the project. Officials of the Republic of Turkey attending this meeting on September 19, 2016 were the Minister of Foreign Affairs and the

Minister of _____, to the best of Flynn Intel Group's current understanding. Unrelated to the contract with Inovo, also in September 2016, Flynn Intel Group Vice-Chairman, Mr. Bijan Kian, was invited to speak at a "Turkey Investment Conference." Mr. Alptekin and officials of the Republic of Turkey also participated in the conference.

Mr. Kian met with the staff of Rep. Michael McCaul on two occasions in approximately October 2016. It is the Flynn Intel Group's understanding that the meetings were not initially related to the Inovo matter, but over the course of the discussions, Mr. Kian raised the firm's representation of Inovo and issues related to the research conducted for Inovo concerning Mr. Gülen and Turkey.

The Flynn Intel Group conducted outreach to an individual associated with a U.S. labor organization regarding charter schools in the United States that are associated with, or allegedly associated with, Mr. Gülen. Flynn Intel Group also oversaw outreach, which was conducted by a public relations firm, to officials in various state governments in the United States.

Pursuant to its contract with Inovo, Flynn Intel Group informally engaged a group of individuals (independent contractors) to form a film and production crew for the purposes of producing a video documentary based on its research associated with Mr. Gülen. The activities included a couple of videotaped interviews and other initial development of content. Because the contract was terminated early, to the best of Flynn Intel Group's current knowledge, the video was neither finished nor disseminated to any third parties.

In late October and early November 2016, representatives of Flynn Intel Group developed an op-ed article based, in part, on the research conducted by Flynn Intel Group under the Inovo engagement. The op-ed was not written or published at the request of, or under the direction or control of, Inovo, the Republic of Turkey, or any other party. Nonetheless, the op-ed addresses subject matter related to the research that Flynn Intel Group conducted for Inovo, and a draft of the op-ed was shared with Inovo in advance of publication. No changes were made to the op-ed based on any feedback from Inovo. Sphere Consulting assisted Flynn Intel Group with placement of the op-ed with The Hill publication.

Attachment #2

14. Receipt of Monies

Date Received	Foreign Principal	Purpose	Amount
09/09/2016	Inovo BV	Consulting	\$200,000.00
10/11/2016	Inovo BV	Consulting	\$185,000.00
11/14/2016	Inovo BV	Consulting	\$145,000.00
TOTAL:			\$530,000.00

Attachment #3

15. Disbursements of Monies

Date	To Whom	Purpose	Amount
9/13/2016	Ekim Alptekin	Refund for reduction in scope	\$40,000.00
10/17/2016	Ekim Alptekin	Refund for reduction in scope	\$40,000.00
09/14/2016	Bijan Kian	Consulting	\$ 12,000.00
09/30/2016	Bijan Kian	Consulting	\$10,000.00
09/30/2016	Bijan Kian	Consulting	\$ 2,000.00
10/11/2016	Bijan Kian	Consulting	\$10,000.00
11/15/2016	Bijan Kian	Consulting	\$40,000.00
11/22/2016	Bijan Kian	Consulting	\$50,000.00
11/22/2016	Bijan Kian	Consulting	\$4,000.00
10/14/2016	Bob Kelley	Consulting	\$2,500.00
10/31/2016	Bob Kelley	Consulting	\$2,500.00
11/21/2016	Bob Kelley	Consulting	\$5,000.00
10/04/2016	Brian McCauley	Consulting	\$5,000.00
10/13/2016	Brian McCauley	Consulting	\$3,000.00
11/14/2016	Brian McCauley	Consulting	\$5,000.00
12/05/2016	Brian McCauley	Consulting	\$15,000.00
09/19/2016	Carl Pilgram	Administrative Support	\$ 4,000.00
10/25/2016	Carl Pilgram	Administrative Support	\$4,000.00
11/16/2016	Carl Pilgram	Administrative Support	\$4,000.00
10/11/2016	David Enders	Videography	\$1,700.00
10/11/2016	David Enders	Videography	\$850.00
12/02/2016	David Enders	Videography	\$850.00
12/02/2016	Hank Cox	Editing	\$300.00
09/13/2016	Michael G Flynn	Administrative Support	\$4,000.00
10/21/2016	Michael G Flynn	Administrative Support	\$4,000.00
11/22/2016	Michael G Flynn	Administrative Support	\$4,000.00
09/14/2016	Michael T. Flynn	Consulting	\$12,000.00
10/20/2016	Michael T. Flynn	Consulting	\$10,000.00
10/20/2016	Michael T. Flynn	Consulting	\$ 12,000.00
11/21/2016	Michael T. Flynn	Consulting	\$54,000.00
11/21/2016	Michael T. Flynn	Consulting	\$ 40,000.00
10/11/2016	Mike Boston	Consulting	\$ 8,000.00
10/14/2016	Mike Boston	Consulting	\$8,000.00
11/21/2016	Mike Boston	Consulting	\$8,000.00
11/10/2016	Operational Behavioral Services	Consulting	\$20,000.00
	White Canvas Group	Open source research – social media	
10/12/16	Rudi Bakhtiar	Interview	\$1,200
10/13/2016	Paul Becker	Consulting	\$1,500.00

11/22/2016	Paul Becker	Consulting	\$6,000.00
10/03/2016	Sam Pemberton	Administrative	\$712.00
10/24/2016	Sam Pemberton	Administrative	\$ 710.00
10/11/2016	SGR LLC	Public Affairs	\$15,000.00
10/24/2016	SGR LLC	Public Affairs	\$10,000.00
11/16/2016	SGR LLC	Public Affairs	\$15,000.00
TOTAL:			\$574, 662.00

Answers to questions posed in letter dated November 30, 2016:

- 1) At any time prior or subsequent to the November 8, 2016, op-ed in The Hill, did you or anyone else at Flynn Intel Group have any communications with any official in the Turkish Government or Mr. Alptekin regarding the op-ed? If yes, please describe the nature and content of such communications.

A draft of the op-ed was shared with Mr. Alptekin in advance of publishing. Mr. Alptekin suggested changes but no such changes were accepted.

- 2) To your knowledge, at any time prior or subsequent to publication of the op-ed, did Mr. Alptekin or anyone else associated with Inovo BV have any communications with any official in the Turkish Government regarding the op-ed?

Not to our knowledge.

- 3) Other than yourself, who was involved in preparation of the op-ed?

My business partner, Bijan Kian, and his long-time editor, Hank Cox.

- 4) Did any official in the Turkish Government, or anyone acting on behalf of the Turkish Government, ask or direct that the op-ed be written, or have any involvement in the preparation of the op-ed? If yes, please explain.

No.

- 5) Did the Turkish Government, or anyone acting on its behalf, receive a copy of the op-ed (or a draft thereof) prior to its publication?

Not to our knowledge.

- 6) Did you, or any other person or entity, receive any compensation for writing the op-ed? If so, who was the source of that compensation?

No.

OMB No. 1124-0006; Expires April 30, 2017

U.S. Department of Justice
Washington, DC 20530

Exhibit A to Registration Statement
Pursuant to the Foreign Agents Registration Act of
1938, as amended

INSTRUCTIONS. Furnish this exhibit for EACH foreign principal listed in an initial statement and for EACH additional foreign principal acquired subsequently. The filing of this document requires the payment of a filing fee as set forth in Rule (d)(1), 28 C.F.R. § 5.5(d)(1). Compliance is accomplished by filing an electronic Exhibit A form at <http://www.fara.gov>.

Privacy Act Statement. The filing of this document is required by the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for the purposes of registration under the Act and public disclosure. Provision of the information requested is mandatory, and failure to provide this information is subject to the penalty and enforcement provisions established in Section 8 of the Act. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, copy of informational materials or other document or information filed with the Attorney General under this Act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, DC. Statements are also available online at the Registration Unit's webpage: <http://www.fara.gov>. One copy of every such document, other than informational materials, is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of any and all documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. The Attorney General also transmits a semi-annual report to Congress on the administration of the Act which lists the names of all agents registered under the Act and the foreign principals they represent. This report is available to the public in print and online at: <http://www.fara.gov>.

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average .49 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Counterespionage Section, National Security Division, U.S. Department of Justice, Washington, DC 20530; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Name and Address of Registrant Flynn Intel Group, Inc. 44 Canal Center Plaza, Alexandria, VA 22314		2. Registration No.
3. Name of Foreign Principal Inovo BV	4. Principal Address of Foreign Principal 47 Adriaanstraat, 3581 SC Utrecht, The Netherlands	
5. Indicate whether your foreign principal is one of the following: <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> Government of a foreign country¹ <input type="checkbox"/> Foreign political party </div> <div style="width: 50%;"> <input type="checkbox"/> Foreign or domestic organization: If either, check one of the following: <div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Association </div> <div style="width: 50%;"> <input type="checkbox"/> Committee <input type="checkbox"/> Voluntary group <input checked="" type="checkbox"/> Other (<i>specify</i>) Besloten vennootschappelijke (private limited company) organized under the laws of the Netherlands </div> </div> </div> <input type="checkbox"/> Individual-State nationality </div>		
6. If the foreign principal is a foreign government, state: <div style="margin-left: 20px;"> a) Branch or agency represented by the registrant b) Name and title of official with whom registrant deals </div>		
7. If the foreign principal is a foreign political party, state: <div style="margin-left: 20px;"> a) Principal address b) Name and title of official with whom registrant deals c) Principal aim </div>		

¹ "Government of a foreign country," as defined in Section 1(e) of the Act, includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States.

8. If the foreign principal is not a foreign government or a foreign political party:

a) State the nature of the business or activity of this foreign principal.

See attachment.

b) Is this foreign principal:

See attachment.

Supervised by a foreign government, foreign political party, or other foreign principal

Yes ☐ No ☐

Owned by a foreign government, foreign political party, or other foreign principal

Yes ☐ No ☐

Directed by a foreign government, foreign political party, or other foreign principal

Yes ☐ No ☐

Controlled by a foreign government, foreign political party, or other foreign principal

Yes ☐ No ☐

Financed by a foreign government, foreign political party, or other foreign principal

Yes ☐ No ☐

Subsidized in part by a foreign government, foreign political party, or other foreign principal

Yes ☐ No ☐

9. Explain fully all items answered "Yes" in Item 8(b). *(If additional space is needed, a full insert page must be used.)*

See attachment.

10. If the foreign principal is an organization and is not owned or controlled by a foreign government, foreign political party or other foreign principal, state who owns and controls it.

See attachment.

EXECUTION

In accordance with 28 U.S.C. § 1746, the undersigned swears or affirms under penalty of perjury that he/she has read the information set forth in this Exhibit A to the registration statement and that he/she is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his/her knowledge and belief.

Date of Exhibit A	Name and Title	Signature

MTF-EDVA00044

Flynn Intel Group, Inc., Registration Statement, Exhibit A

Attachment

Item 7- Foreign Principal

Inovo BV (“Inovo”) is a Dutch company incorporated in 2005 to provide business consultancy services.

According to Arent Fox, LLP, counsel to Mr. Alptekin/Inovo:

1. Inovo is a privately owned company that has not received, directly or indirectly, funds or financial support from any government during the course of its engagement of Flynn Intel Group Inc. including the Republic of Turkey;
2. At the time Inovo hired Flynn Intel Group, Inovo represented a private sector Israeli company that sought to export natural gas to Turkey, and it was for support of its consulting work for this client that Inovo engaged Flynn Intel Group, specifically to understand the tumultuous political climate at the time between the United States and Turkey so that Inovo could advise its client regarding its business opportunities and investment in Turkey;
3. Mr. Alptekin is dual citizen of the United States and the Netherlands, and is a businessman who holds a number of positions in international business organizations such as Honorary Counsel to the Republic of Albania, Chairman of the Turkish-American Business Council, and Mr. Alptekin nor any organization in which he participates is an agent of the government of the Republic of Turkey.

Flynn Intel Group does not know whether or the extent to which the Republic of Turkey was involved with its retention by Inovo for the three-month project. Flynn Intel Group is aware that Mr. Alptekin consulted with officials of the Republic of Turkey regarding potential work by Flynn Intel Group, and Mr. Alptekin introduced officials of the Republic of Turkey to Flynn Intel Group officials at a meeting on September 19, 2016.

memo

To: Jim Gillis and Prosecution Team in U.S. v. Rafiekian

From: Sidney Powell and Michael Flynn Defense Team

Date: June 27, 2019 [CORRECTED]

Subject: Privileged Material from Covington & Burling Flynn File

We have transmitted to you two *nonprivileged* items of interest that we discovered during our review of some of the materials we received from Covington & Burling as successor counsel in the Michael Flynn representation.

In the spirit of full cooperation, and to further allay your concerns about communications between our client and his former counsel, we now transmit to you 8 handwritten pages of the notes of the initial interview of Michael Flynn by Covington & Burling, which occurred on January 2, 2017. Also attached to this memo are 2 typewritten pages that we produced yesterday; they decipher some of what is contained in the handwritten notes.

These notes are obviously protected by Michael Flynn's attorney-client privilege, and we are waiving that privilege only for purposes of this proceeding, and only with respect to FARA-related matters.

B

memo

To: Jim Gillis and Prosecution Team in U.S. v. Rafiekian

From: Sidney Powell and Michael Flynn Defense Team

Date: September 27, 2019

Subject: Privileged Material from Covington & Burling Flynn File

We have transmitted to you two *nonprivileged* items of interest that we discovered during our review of some of the materials we received from Covington & Burling as successor counsel in the Michael Flynn representation.

In the spirit of full cooperation, and to further allay your concerns about communications between our client and his former counsel, we now transmit to you 8 handwritten pages of the notes of the initial interview of Michael Flynn by Covington & Burling, which occurred on January 2, 2017 as well as 2 handwritten pages from the Covington & Burling notes concerning a phone conference with Michael Flynn on February 14, 2017. Also attached to this memo are 2 typewritten pages that we produced yesterday; they decipher some of what is contained in the handwritten notes.

These notes are obviously protected by Michael Flynn's attorney-client privilege, and we are waiving that privilege only for purposes of this proceeding, and only with respect to FARA-related matters.

A.C-WP-PAC

MF

No other

Levichs - W. Coast - Levix - Iranian American founder.
Businessman - Bloomberg. Good reader connections

Adrian - Advice, consult Business development

Introduced Louisa to Verizon

Founder Dr. "Reza Sadri" - grew up in U.S.

Dr. Reza Sadri - Advisor to the company
Iranian American Krishna Sarkar

(1) Company in Massachusetts

Proin Co. - Law Enforcement

Proins - it is an enforcement - FBI

Founder may have reached out to government

Business development → Sales and revenue

Enzo - Can be
Vice Clerk - Hijra

"Agha" Alptekin - Senior on Turkish-American Council
National Commission - Iranian American New Year
No call re: Ambassador.

J-1/April 2016 - Brief discussion

Consult for Inovo. Post Corp.

Crack cocaine is Turkish business to invest in Turkey

Agreed to consult to Inovo. August 9.

Advising Consult services to Inovo. Crack cocaine &
Invest in Turkey

1st Convention - August 5-11 in Texas
Duty of Caprio and Trump
Duty schedule

Bijan - Vice chair man 202
Mike and 35%

revising house
small 201

Mike has LLC for book and speaking

Bijan - Iran American . OS nationalized
Former member of Ex Iran
Served Bush and Obama
Karl & David of shale & oil.

Nelrose Commission, USA, Iran - American SHA

Agria - is ~~the~~ Invo
Bijan large donor to FBI.

Conradia on what we could do.

Came to DC. Friday afternoon phone calls to Agria
Update on our efforts

2 x calls \approx 30 minutes each

Agria set up meeting in September.

Minister of Turkey in NY for UNGA
met 2 minutes - Transportation and Foreign

re. working, Agria, Bijan
30 - 45 minutes.

RK - Detek?

MF only in the agreement - Sit

Could not be again. How would do what we do
Hend from then on the delays they're facing

≈ 2 months after copy

Research - how are things in Turkey

RK - Gulan?

MF - They did. You are an of necessity

RK - notes?

MF - Don't know of any - Maybe on Turkish side

RK - Have email, from Mike, account
use Virtue

MF 2

AL accounts shut down in December. except MF.

Delegated me and Bijan

Have AL Net's backing of Bijan.

Can get the AL from him.

Can access his. Have mine and MF.

Control accounts - Virtue on top of certain emails

He has access to them, we don't

Virtue

RK - Have some emails -

RK. weird to sit w/ Turkish Minister?

MFI - yes had just come from other meeting on campaign side.

Talked about where we were @ that time

Were not very far

KV Research into Gulen - Team ^{near} ~~that~~, Brian McCauley
↳ Advisor ↳ principal

Project confidence 75% report re Gulen. ^{from FBI}

Plan for Assembly on what they found, based on the report

Rijan says that report was an idea.

RK. Specific content. Credibility of individuals.

Have received film and production crew

MFI other emails that show details.

Mike Boston

RK - Findings and criminal records.

Sphere Consulting

MFI - Investigation we conducted

RK - network in US.

MFI - Sphere Support in by Rijan.

To work video, story, Turkey etc to invest in.

Confidence in the country to invest

RK. open and ~~some~~ sleeper networks, plus criminal records

Charges connected

MEI Let's the details to Bijan

RK. Bob Kelly - an CDI

MEI - Lyle / Bryant - Abundance of caution
Bob Kelly - register - Don't know what that is
We'll be doing work for them make up
out of my depth

Kelly didn't work on underlying work.

RK - Kelly listed not you

MEI - yes.

KV - Kelly asked Bob. Outside company.

Bijan ~~that~~ told me it was outside company
Bob is Kelly

Mike Boston responsible to oversee.

Bijan gave prices to everyone

MEI. I won't be there day to day
Continue with ad meeting
Contract is for 90 days.
Decided not to continue.

RK. Captain Athenian?

MEI - Don't know.

KV - Bijan has answers. Contributed by email.

Travis - Services company Agustin is consultant.

Bijan said it's to look smart in meetings

KV. Ekin - emails show Turkey
Mike copied on ^{most} the emails

MF1 by collector it journal packed - few hours only.

KV Akin → Bijan and MF1 - August 4.
Money from Ministry

Bob Kelly - Sole partner. Counsel outside "to the project"
Government behind it, and Mike copied.

RK - Call from Lumen in August.

FARA advice - referred to other lawyer.

MF1 July 19 - Conversation -

Did some speeches on LLC
~~the~~

MF2 - This project. Conn. of Bijan as wire transfer.

To FIG out to Ekin

Accepted payments from Inovo

Ekin paid

KV - Contract 3 x 200k

Second was 105

The other as 105

Bijan said no PR or lobbying so sent them money back.

Hired Ekin to as consultant

MF2 - Never asked or doubted.

KV - Trusted Bijan

FIG shut down Nov 30.

MF2. He has the back up ip file. His FIG materials

KV - notice to preserve to clerk or inquiry.

MF2 - Bijan acknowledged.

KV - Shut down. Don't delete end of November.

RK - Where is it?

MF2 - Google business. Archive data. - yes

~~But~~ It sends you an email of links

RD - Google may still have it? Paid y?

MF2 - yes paid by MF1 still has email.

RK - Do anything humanly possible.
Stroz?

MF2 - Have access to his email - have terms, names.

Searches as many as I could

61 of emails

KV - Lots of emails say Mike in charge
Grid in meeting of us.

MF2 - He didn't bring computer to meeting

RK - opad.

MF1 - Wanted it to go before the election. Shipped out
Hill protect it up

I've seen very strong on video. Tex pays funded charter school,
Russia trying to drive wedge,

Force is now it's forced instead - my title

Political maneuvering on my part. Admin Lavin, our ally - NATO
losing to Russia

Gular was ~~was~~ creating tension

RK - Connection to Inovo?

ME1 - Paying close attention to it. got me thinking
Back tour in Texas, Ron White.

Living Texas Mayor - August - Challenges w/ Galen chadwick
Back on July 12 - records

Wrote series of eds

RK - whose idea

ME1 - Jointly to do it. I outlined ideas - He had other people edit
RK. First draft

ME1 - He did.

Talked about ways to ~~start~~ the project. Conference project.

ME2 - Elvin isn't comfortable -

RK - Given doc to review and edit

ME1 - Elvin says isn't the whole.

RK - Hank Cox, Sphere Consulting - had role in edit
Sphere did the shopping of up ed.

(Have 3 on meeting @ CIA building.

1:07

Break to read documents

1:35

Conference of Flynn

2-14-17 4:30 pm

RK, KV, M Flynn, Lori

KV- ~~the~~ spoke before.

Documents in email to look @ him

W/ find to read more carefully

RK- David Landman call. HH, CF, on cell.

Unrelated to stuff in the press.

Time to talk and interview - facts.

Possible draft registration. ~~The~~ Decision of Court

When talking? he asked Call and let us know able to talk.

Read it: File or subpoena may follow.

If file, possible they'll still look. Take a lot of wind away.

Focus is whether you register. Could audit the filing

Subpoena less likely.

not yesterday?

RK - yes.

RK- Where we are. Told them is Jan we expected to file.

Email, docs, interviews - little evidence of business / commercial.

Except after the fact letter.

not discussed previously - after the fact.

Talk to people involved. Little on oil field.

Focus on Golan, and a drive off ~~the~~ focus on Golan / Turkey

Meeting / govt in September - trial to Conference.

Op-ed distributed by Sphere - paid things contract.

Op-ed on same topic -> Golan

LOA only if Turkey not denying and not prin. beneficiary

Email - green light. Big on inquiry, not confidence.

Other view - Elan / Patri, business, green light unrelated.

We could fight it out. Would likely pursue Court. expensive.

might win - but big fight

Media storm. Conspiracy theories, etc.

- Payments added to
chat

- Kept this from being
factor

- FOIPA interconnected

MF - Filing late - Legality

Smart thing to file, be precise.

RK - Take time with the draft.

High level - don't have the detail.

Goals to explore?

Meet w/ Heather w/ the document.

Address any of her concerns.

Can send cover letter. Single letter summarizing the position.

Cojant explanation of our position.

Cancel of public statements. Interconnected. Can all blow back.

Selected Covington notes from January 2, 2017, taken by Brian Smith by hand:

Flynn told Covington from the outset:

@2. "Aquim [sic] set up meeting in September.

Minister of Turkey in NY for UNGA.

Met 2 ministers – Transportation and Foreign

Me, Woolsey, Aquim [sic], Bijan –

30-45 mins."

@3. Kelner asked about: Gulen?

Flynn replies: "They did. [brought him up].

@4. "Re ____ into Gulen – _____

Project confidence 75 pp report re: Gulen.

Plan for _____ on what they found, based on the report."

MF: "Other emails that show details."

RK: "oped and xxxx sleeper networks, plus criminal referrals, changes context

@5. MF: "Left details to Bijan."

@7. RK: oped.

MF: Wanted it to go before the election. Shipped out

Hill picked it up.

I've been very strong on Gulen. Taxpayer funded Charter Schools.

Russia trying to drive wedge.

Friend in need is friend indeed – my title.

Published ----- on my part. Admin losing our ally – NATO

Losing to Russia.

Gulen was creating tension."

* * *

@. 8.

RK: Whose idea?

MF. Jointly to do it. I offered ideas – he had other people edit.

RK: First draft

MF: He did [Bijan]

Talked about ways to do project Confidence project.

* * *

KV: Hank Cox. . . . had role in edit.

General Flynn 1/2/17 (Brian Smith handwritten notes) Transcription by Sidney Powell

Page 1. [relevant portions]

MF

No others

Agreement to ___ to Inovo. August 9.

Advisory consult services to Inovo. Create confidence to invest in Turkey.

Page 2. Post convention – August 9-11 in Texas

Busy with campaign and Trump

Busy schedule

Bijan – vice chairman 30%

Mike owns 35%

Bijan – Iranian American - ___ naturalized

Former member of ExIm [bank]

Served Bush and Obama

_____ commission, _____, Iranian- American staff

Aquim [sic] is Inovo.

Bijan brought business to FIG

Conversation on what we would do

Came to DC. Friday afternoon phone calls to Aquim

Update on our efforts

2 x calls ~ 30 minutes each

“Aquim [sic] set up meeting in September.

Minister of Turkey in NY for UNGA.

Met 2 ministers – Transportation and Foreign

Me, Woolsey, Aquim [sic], Bijan –

30-45 mins.”

Page 3

RK: Details?

MF: only in ___ engagement a bit

Laid out for Aquim [sic] how we’d do what we do

Heard from them on the challenges they’re facing

~ 2 months after the coup
Research – how things are in Turkey

RK: Gulen?

MF: They did. Where we are w/ relationship.

RK: Notes?

MF: Didn't know of any – maybe Turkish side

KV: Have the emails from Mike's account.
Use Virtue

MF2: FIG accounts shut down in December except MF
Backed-up me and Bijan
Have file that's backup of Bijan
Can get the file from him
Can't access his. Have mine and MF1
Gmail accounts – Virtue on top of certain emails
He has access to those. We don't

Virtru

K: Have some emails

K: Weird to sit with Turkish ministers?

MF1: yes had just come from other meeting on campaign side.
Talked about where we were @ the time
Were not very far

KV: Research into Gulen -- ____ near? Advisor Brian McCauley → principal
former FBI

Project Confidence – 75-page report re Gulen
Plan for disseminating what they found based on report

Bijan says that report was an idea.

RK: Specific contract. _____ of individuals.
Have retrieved film and production crew

MF1: Other emails that show the details
Mike Boston

RK: Findings and criminal referrals
Sphere Consulting

MF1: Investigation we conducted

RK: Network in US

MF1: Sphere brought in by Bijan.
To create video, story. Turkey to invest in.
Confidence in the country to invest.

RK: Op Ed and sleeper networks, plus criminal referrals – changes
context

5. MF1: Left details to Bijan

RK: Bob Kelly – on LDA

MF1: Sept/August -- Abundance of caution
Bob Kelly – register – don't know what that is
We'll be doing work for this *make up*?
Out of my depth.
Kelly didn't work on underlying work.

RK: Kelly listed not you

MF1: yes

KV: asked Bob. Dutch company.
Bijan told me it was Dutch company
Bob is attorney

Mike Boston responsible to oversee
Bijan gave prices to everyone

MF: I wasn't involved day to day
Conference calls and meetings
Contract is for 90 days
Decided not to continue

RK: Captain *Akemin*?

MF1: Don't know

KV: Bijan has answers. Contradicted by emails.

Inovo services company. Aquim is consultant
Bijan said it's to look smart in meetings

6. KV: Ekim -- emails show Turkey.
Mike copied on many the emails.

MF1: my calendar jam packed – few hours only

KV: Ekim → Bijan and MF1 – August 4

Money from ministry

Bob Kelly --- sole practitioner.

Counsel outside “to the project”

Government behind it, and Mike copied.

RK: Call from someone in August.

FARA advice -- referred to other lawyer.

MF1: July 19 convention –

Did some speeches on LLC

MF2: This project. Comm w/Bijan on wire transfers.

to FIG and to Ekim.

Accepted payments from Inovo.

Ekim paid.

KV: Contract 3 x 200K

Second was 185

Then another for 185

Bijan said no PR or lobbying so sent them money back

Hired Ekim as consultant

MF2: Never asked or doubted

KV: trusted Bijan

FIG shut down Nov. 30

MF2: he has the back up zip file. His FIG materials.

KV: Notice to preserve w/o checking or inquiring

7. MF2 – Bijan acknowledged.

KV: Shut down. Don't delete. End of November.

RK: Where is it?

MF2: Google business. Archive data - Yes

It sends you an email w/ links

BDS: Google may still have it? Paid up?

MF2: Yes paid by MF1 still his email.

RK: Do everything humanly possible

Stroz?

MF2: Have access to his email. Send terms, names.

Searched as many as I could

61 pp emails.

KV: lots of emails say Mike is in charge

[?????] lied in meeting with us

MF2: He didn't bring computer to meeting.

RK: Op Ed

MF: wanted it to go before election. Shipped out

Hill picked it up

I've been very strong on Islam. Taxpayer funded charter schools

Russia trying to drive wedge

...Friend in need is friend indeed – my title

Published _____ on my part. Admin losing our ally – NATO

Losing to Russia

Gulen was creating tension

Page 8:

RK: Connection to Inovo?

MF: Paying closer attention to it, got me thinking.

Book tour in Texas. Ron White.

Irving Texas mayor – August on challenges with Gulen charter schools. Book on July 12.”

Wrote several op-eds.

RK: Whose idea?

MF: Jointly to do it. I crafted ideas – he had other people edit.

RK: First draft?

MF: He [Bijan] did

talked about ways to do project Confidence project

MF2: Ekim isn't comfortable

KV: Given doc to review and edit

MF1: Ekim says he didn't like article

KV: Hank Cox – Sphere consulting—had role in edits

Sphere did the shopping of Op Ed

Page 9: [relevant comments]

RK: Sphere registered November

Documents -- Gulen op research, not commercial

MF1: Sphere w/ Ekim - handful of times